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The Effect of Joint and Several Liability on the Settlement Rate--Mathematical Symmetries and Metaissues about Rational Litigant Behavior: Comment on Kornhauser and Revesz

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THE EFFECT OF JOINT AND SEVERAL LIABILITY ON THE SETTLEMENT RATE— MATHEMATICAL SYMMETRIES AND METAISSUES ABOUT RATIONAL LITIGANT BEHAVIOR: COMMENT ON KORNHAUSER AND REVESZ

JOHN J. DONOHUE III*

LEWIS Kornhauser and Richard Revesz have given us an insightful and thought-provoking series of papers analyzing the effects of joint and several liability. They have discussed how joint and several liability influences the behavior of those engaged in activities that involve risk of harm and have unraveled the efficiency implications of joint and several liability under the substantive standards of negligence and strict liability. In their latest series of papers,¹ they extend their analysis of joint and several liability by examining the effect of this doctrine on the inclination of parties to settle litigation. They demonstrate convincingly that the existence of joint and several liability can have a profound effect on how rational and highly informed parties would decide whether to settle a case involving multiple defendants and that this is true both when the defendants are fully solvent and when one or more vary in their ability to satisfy judgments.

Section I of this paper begins with a simple illustration of a central finding from the work of Kornhauser and Revesz—that in the case of

* Professor, Northwestern University School of Law. Presented at the John M. Olin Program in Law and Economics Conference on “Economic Analysis of Civil Procedure” at the University of Virginia School of Law, March 26–27, 1993. My thanks to the conference participants for their helpful comments.

¹ Lewis A. Kornhauser & Richard L. Revesz, *Multidefendant Settlements: The Impact of Joint and Several Liability*, 23 J. Legal Stud. 41 (1994); Lewis A. Kornhauser & Richard L. Revesz, *Multidefendant Settlements under Joint and Several Liability: The Problem of Insolvency*, 23 J. Legal Stud. 517 (1994).

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