

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMELIA PEREZ,)	
Plaintiff,)	Civil Action No. 07-30244-GAO
v.)	
KATHERINE PERCARPIO,)	
Defendant/)	
Third-Party Plaintiff,)	
v.)	
RAFEAL ZENO,)	
Third-Party Defendant/)	
Fourth-Party Plaintiff,)	
v.)	
ELIZABETH BALLOU and MICHAEL)	
GELLMAN,)	
Fourth-Party Defendants.)	

RAFAEL ZENO, SR.,)	
Plaintiff/Defendant in)	
Counterclaim/Third-Party)	
Plaintiff,)	
)	
AWILDA ZENO, individually and as mother and)	
next best friend of RAFAEL ZENO, JR. and)	Civil Action No. 08-11891-GAO
JONATHAN ZENO,)	
Plaintiffs,)	<u>CONSOLIDATED</u>
v.)	
KATHERINE B. PERCARPIO,)	
Defendant/)	
Plaintiff-in-Counterclaim,)	
v.)	
ELIZABETH BALLOU and MICHAEL)	
GELLMAN,)	
Third-Party Defendants.)	

ORDER
July 27, 2010

O'TOOLE, D.J.

This Order resolves two issues raised at the pre-trial conference:

Rafael Zeno, Sr. is entitled to a jury trial on Katherine Percarpio's contribution claim under Massachusetts General Laws chapter 231B. Under Massachusetts law, the right to a jury

trial on a statutory cause of action exists where the legislature confers such a right, Nei v. Burley, 446 N.E.2d 674, 677 (Mass. 1983), *or* where the statutory cause of action is analogous to an action at law, see Dalis v. Buyer Adver., Inc., 636 N.E.2d 212, 214 (Mass. 1994). The contribution claim requires a determination of the extent to which Zeno's negligence contributed to Amelia Perez's injuries. See Panagakos v. Walsh, 749 N.E.2d 670, 672 (Mass. 2001) ("[T]he party seeking contribution must show that the potential contributor is directly liable to the tort plaintiff."). Because the underlying issue of negligence is legal in nature, a right to a jury trial exists on the contribution claim. See also In re N-500L Cases, 691 F.2d 15, 19-21 (1st Cir. 1982) (finding a right to a jury trial under Puerto Rico's contribution statute); Daley v. E.I. Du Pont De Nemours & Co., No. 94-2849, 1994 WL 928187, at *1-2 (Mass. Super. Ct. May 2, 1994) (finding a right to a jury trial under Massachusetts's contribution statute).

Zeno's contention that the release executed by Perez bars Percarpio's contribution claim under Massachusetts General Laws chapter 231B, § 4 lacks merit. See Robertson v. McCarte, 433 N.E.2d 1262, 1264-65 (Mass. App. Ct. 1982) (holding that Massachusetts General Laws chapter 231B, § 4 does not apply to situations where both tortfeasors are named in the release).

/s/ George A. O'Toole, Jr.
United States District Judge