

Pennsylvania Adopts Significant Tort Reform Eliminating Joint and Several Liability: Fair Share Act Signed into Law

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In our June 2011 Newsletter, we discussed the status of important pending legislation in **Pennsylvania (the Fair Share Act)** designed to eradicate the common law doctrine of joint and several liability. As of the date of that article, the Pennsylvania House of Representatives approved **the Fair Share Act (H.B. 1)**, and the Act was before the Pennsylvania Senate for consideration. After extensive debate, the Senate ultimately approved a bill substantively identical to H.B. 1.

On June 28, 2011, Governor Tom Corbett signed the Fair Share Act into law, effective immediately. The Fair Share Act, (42 Pa. Cons. Stat. § 7102), provides for proportionate share liability among joint tortfeasors and eliminates the common law doctrine of joint and several liability in all but a few limited situations. Under the new law, each defendant is liable for “that proportion of the total dollar amount awarded as damages in the ratio of the amount of that defendant’s liability to the amount of liability attributed to all defendants and other persons to whom liability is apportioned under subsection (a.2).” 42 Pa. Cons. Stat. § 7102(a.1)(1). Joint and several liability still applies where there is an intentional misrepresentation, an intentional tort, a claim under section 702 of the Hazardous Sites Cleanup Act, a violation of section 497 of the Liquor Code or where a defendant is liable for 60% or greater of the total liability apportioned to all parties. 42 Pa. Cons. Stat. § 7102(a.1)(3).

The Fair Share Act is a significant victory for product manufacturers, insurance companies and other businesses who are often hauled into litigation because of their “deep pockets” even if they might be only minimally liable. Reactions from these groups has been overwhelmingly positive. Pennsylvania Chamber of Business and Industry Vice President Gene Barr commented that the Fair Share Act “restores fairness and predictability to the state’s legal system, encouraging business investment and job growth.”¹ The Chairman of the Insurance Agents & Brokers of Pennsylvania further praised the new law: “The act is a win for consumers, businesses and the insurance industry, which all carry the financial burdens of such a litigious environment.”²

Conclusion

As a practical matter, passage of the Fair Share Act will likely decrease the frequency “deep pocket” defendants with minimal liability are brought into litigation. Even if such defendants are joined in litigation, the Fair Share Act will reduce the possibility of inequitable judgments. As time passes, product manufacturers, insurance companies and other business who are often co-defendants in various litigations will continue to see the benefits of this significant tort reform.

1 Press Release, Gov. Corbett signs Chamber members’ No. 1 lawsuit abuse reform priority (June 28, 2011) (on file with author and available at:

http://www.pachamber.org/www/news/press_releases/2011/Gov%20Corbett%20signs%20Chamber%20members%20No%201%20lawsuit%20abuse%20reform%20priority.php)

2 Press Release, IA&B applauds Pennsylvania lawsuit-abuse reform (June 28, 2011) (on file with author and available at:

http://www.iabgroup.com/press_center/releases/2011/06_28_tort_reform.html).

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