

PA Governor Signs Fair Share Act Into Law

After months of debate throughout the Commonwealth, Governor Tom Corbett has followed through on his campaign promise of tort reform and has signed the Fair Share Act into law. This Act eliminates joint and several liability in the recovery of all damage awards, proportional to responsibility for the injury or loss. The Act does, however, contain certain limited exceptions. Specifically, a defendant's liability "shall be joint and several," in the following actions: "(i) Intentional misrepresentation. (ii) An intentional tort. (iii) Where THE defendant has been held liable for not less than 60% of the total liability apportioned to all parties. (iv) A release or a threatened release of a hazardous substance under...the Hazardous Sites Cleanup Act. (v) A civil action in which a defendant has violated section 497 of the...Liquor Code." A copy of Senate Bill 1131 is available [here](#) for your consideration.

This is the third time, in the past ten years, that Pennsylvania's General Assembly has passed legislation which has sought to modify joint and several liability through virtually the same legislative language. The 2002 version was rejected by the Pennsylvania Supreme Court, as unconstitutional in the manner in which the law was passed, through DeWeese v. Cortes, 588 Pa. 738, 906 A.2d 1193 (2006). The later 2006 version was vetoed by then-Governor Ed Rendell.

The 2011 Fair Share Act is likely to face its own constitutional challenges, perhaps through contentions, by future plaintiffs, that it wrongly limits their ability to recover damages, resulting in a violation of their due process or equal protection rights. Under traditional notions of joint and several liability law, joint tortfeasors are each liable for the full amount of a judgment, regardless of their respective degrees of fault. Hence, a plaintiff's judgment has been accorded great protection in that a joint tortfeasor, who is only determined to be 1% liable, may still be called upon to pay the full amount of the judgment. Pursuant to the Fair Share Act, however, a defendant is responsible to pay only its proportionate share (*i.e.*, "fair share") of a judgment, unless one of the above-referenced five exceptions applies.

Notably, the 2011 Fair Share Act became effective as of the moment that it was signed into law by Governor Corbett. Additionally, it applies to all causes of action which accrue on or after that same date. The legislation is not retroactive to any pending case, nor to any claim which has a date of loss prior to today. As a result, we must all carefully examine new claims for the precise date of loss, as they are reported in the future, to determine if the 2011 Fair Share Act will be applicable.

If you have any questions about this E-Flash, please contact Barbara S. Magen, Esquire, or Richard B. Wickersham, Jr., Esquire. Ms. Magen, a Principal and Chair of our Appellate Department, may be reached at 215-587-1063 or BMagen@postschell.com. Mr. Wickersham, a Principal in our Casualty Department, may be reached at 215-587-6612 or RWickersham@postschell.com.

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