

Pennsylvania Abolishes Joint Liability with Enactment of Fair Share Act

June 30, 2011

On June 28, Pennsylvania Governor Tom Corbett signed the Fair Share Act (the Act) (2011 Pa. S.B. 1131) into law. The Act amends Pennsylvania's long-standing practice of joint and several liability to a several liability model that permits a jury to award damages based on a percentage of fault. A prior iteration of the Act was signed into law in 2002 but was found to violate the Pennsylvania Constitution on procedural grounds.

Under current Pennsylvania law, joint and several liability requires a defendant that is found responsible for any portion of a plaintiff's injury to be responsible for 100% of the damages owed to the plaintiff, regardless of the apportionment of fault. Under the Act, a defendant that is found less than 60% liable will only be responsible for its proportionate share of the total. Conversely, a defendant that is found to be liable for 60% or more of the damages will be jointly and severally liable for the total damages owed to the plaintiff. If joint and several liability applies, a defendant that has paid more than its proportionate share of damages may seek to recover contributions from co-defendants. The Act contains exceptions permitting joint liability to continue to be imposed for intentional misrepresentations, intentional torts, certain environmental contamination claims, and certain violations of the Liquor Code.

With respect to apportionment of fault, the Act limits the population of potentially responsible nonparties that a jury may consider. The Act permits a jury to consider nonparties that entered into a settlement agreement with the plaintiff. Although judgment cannot be entered against a settling party, the jury is permitted to find the settled party responsible for a percentage of the damages. The Act does not permit a jury to apportion fault to employers who are immune from tort liability pursuant to the Workers' Compensation Act.

Pennsylvania will now join the overwhelming majority of states that recognize some form of apportionment of fault.

If you have any questions or would like more information on any of the issues discussed in this LawFlash, please contact the authors, **Steven A. Luxton** (202.739.5452; sluxton@morganlewis.com) and **Douglas J. Gush** (215.963.4882; dgush@morganlewis.com), or any of the following Morgan Lewis attorneys:

Philadelphia

Brady L. Green
Douglas J. Gush

215.963.5079
215.963.4882

bgreen@morganlewis.com
dgush@morganlewis.com

Houston

Brady Edwards

713.890.5110

bedwards@morganlewis.com**Pittsburgh**

Andrew W. Knuth, III

412.560.7411

aknuth@morganlewis.com**Washington, D.C.**

Steven A. Luxton

202.739.5452

sluxton@morganlewis.com

Nagwa Hultquist

202.739.5541

nhultquist@morganlewis.com**About Morgan, Lewis & Bockius LLP**

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