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LITIGATION DEPARTMENT

# ALERT

## PENNSYLVANIA'S FAIR SHARE ACT REPEALS "DEEP POCKETS" RULE

By Joshua Gayl

On June 28, 2011, Pennsylvania Governor Tom Corbett signed into law Senate Bill 1131, better known as the "Fair Share Act," which largely removes joint and several liability from Pennsylvania law. Under the Fair Share Act, individual defendants found to be less than 60 percent liable in civil cases, who were previously responsible for 100 percent of the judgment awarded against multiple defendants under the joint and several liability law, are now responsible for paying only their proportionate share of the judgment. The Fair Share Act is effective immediately and applies to causes of action that accrue on or after the effective date of the law.

The Fair Share Act was predominantly supported in the Pennsylvania Legislature by the Republican Party, which argued that joint and several liability unfairly punished "deep-pocketed" businesses or even small business owners that were dragged into litigation because of their ability to pay the judgment for all defendants. Solvent entities in Pennsylvania were frequently compelled by the threat of joint and several liability to settle frivolous lawsuits out of fear they would have to pay for a damages award disproportionate to their alleged share of culpability.

Critics of the Fair Share Act argue the new law will impact innocent victims who will not be able to obtain a full recovery from negligent acts of multiple tortfeasors. However, the Fair Share Act does require defendants found to be 60 percent or more at fault to be responsible for the full amount of the judgment. The Fair Share Act also excludes judgments in such circumstances

as intentional misrepresentations, intentional acts, environmental crimes or liquor law violations. For example, joint and several liability continues to apply under the Pennsylvania Hazardous Sites Cleanup Act so that parties who contribute a very small portion of the waste at hazardous sites remain at risk for 100 percent responsibility.

A similar bill became law in 2002 but was overturned on constitutional grounds because the bill into which it was written violated the Pennsylvania Constitution's requirement that bills confine themselves to a single subject. This time around, business groups, including the Pennsylvania Chamber of Business and Industry, the Property Casualty Insurers Association of America, Insurance Agents & Brokers of Pennsylvania, the Insurance Federation of Pennsylvania, and the Pennsylvania Association of Mutual Insurance Companies, praised the passage of the Fair Share Act as tort reform that will improve the state's business climate, job creation, and cost of goods and services.

Four Fox Rothschild attorneys from the Bucks County office attended the February 14, 2011 formal Government Affairs Committee meeting in Harrisburg, Pennsylvania, where the Fair Share Act (then in legislative committee) was addressed.

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