

ALERTS AND UPDATES

New Pennsylvania Law Limits Joint and Several Liability

June 29, 2011

On June 28, 2011, Pennsylvania Gov. Tom Corbett signed into law [Senate Bill 1131](#); and in doing so, the future of joint and several liability in Pennsylvania was reduced to a list of exceptions. The new law provides that "where liability is attributed to more than one defendant, each defendant shall be 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."

This is a distinct change from prior Pennsylvania law, in which each defendant could be held responsible for the total verdict, not based upon the proportion of liability attributed to each defendant. The change may be more noticeable in strict liability matters involving asbestos actions and similar mass tort cases, where previously plaintiffs could hold a defendant whose products were a minor portion of the plaintiffs' overall exposures liable for a per-capita share of liability.¹ The new law also requires the courts to "enter a separate and several judgment in favor of the plaintiff and against each defendant for the apportioned amount of that defendant's liability." Previously, a judgment could be entered against one defendant for the entire verdict, with that defendant's only remedy to seek contribution from the joint tortfeasors. With this new legislation, separate judgments for defendants found less than 60-percent liable eliminates this practice.

Joint and several liability still exists in the following actions: intentional misrepresentation; intentional torts, where a defendant is held liable for 60 percent or more of the total liability apportioned to all parties; the release or threatened release of a hazardous substance under the Hazardous Sites Cleanup Act; and civil actions in which a defendant violated section 497 of the Pennsylvania Liquor Code.

Additionally, the new law allows, upon "appropriate requests and proofs by any party," the trier of fact to consider "for [the] purposes of apportioning liability only, the question of liability of any defendant or other person who has entered into a release with the plaintiff with respect to the action and who is not a party." This allows defendants to identify and demonstrate the liability of any nonparties who settled with a plaintiff prior to suit and bankruptcy trusts that settle claims in asbestos or similar actions, as well as any parties who settled prior to trial.

The new law applies to cases that accrue on or after June 28, 2011. The date of accrual, under Pennsylvania law, is the date the plaintiff knew or should have known he or she was injured.²

The impact of the new law is likely to be seen as new filings are made following the statute's enactment. It likely would not impact any cases already filed, unless additional causes of action are added that accrued on or after June 28, 2011.

For Further Information

If you have any questions about this *Alert* or would like more information, please contact [Sharon L. Caffrey](#), [Alan Klein](#), [Alyson B. Walker](#), any [member](#) of the [Products Liability and Toxic Torts Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

Notes

1. See *Ball v. Johns-Manville Corp.*, 625 A.2d 650, 658–59 (Pa. Super. 1993).
2. See *Baumgart v. Keene Bldg. Prods. Corp.*, 633 A.2d 1189, 1192 (Pa. Super. 1993).

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