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Impact of Pennsylvania Fair Share Act

Notwithstanding any major winds of change on the horizon, Pennsylvania's product liability landscape appears bright for the foreseeable future.

Recently, Pennsylvania Governor Tom Corbett signed into law Pennsylvania Senate Bill 1131, commonly known as the "Fair Share Act," which significantly modifies Pennsylvania's comparative fault statute.

The most notable change effected by the Act is its elimination of joint and several liability in most tort actions as to any defendant found less than 60% at fault for the claimed injury. Thus, a defendant found less than 60% at fault may now be held liable only for its "fair share" of the damages as determined by the trier of fact. Secondly, the Act allows jurors to consider the causal responsibility of non-parties in apportioning fault in some cases, including would-be defendants who enter into a release with the plaintiff.

Exceptions to the Act's several liability protection include: 1) intentional torts; 2) torts involving intentional misrepresentation; 3) torts concerning the release or threatened release of a hazardous substance under the Hazardous Sites Cleanup Act; or 4) dram shop liability.

Efforts to amend Pennsylvania's previous law—whereby a defendant found even 1% at fault for injury or economic loss could theoretically be held liable to pay 100% of the plaintiff's damages—have been on the table in various forms for nearly a decade. In fact, an earlier iteration of the Act was signed into law in 2002 but ruled unconstitutional by the Supreme Court on ancillary procedural grounds. A later re-write was enacted by the legislature in 2006 but vetoed by then-Governor Ed Rendell.

Notably, passage of the Fair Share Act comes amid uncertain times generally in Pennsylvania product liability law, as federal courts sitting in Pennsylvania have been applying the Restatement (Third) of Torts with increasing frequency while the state courts continue to apply § 402A of the Restatement (Second). Meanwhile on the legislative side, a proposed Senate Bill seeks to impose a 15-year statute of repose on most product liability actions.

Given that Pennsylvania product liability law utilizes a pro rata means of apportioning fault among strictly liable defendants, it remains to be seen how courts will apply this amended framework in actions involving multiple strictly liable defendants and/or in actions involving both negligent and strictly liable defendants. However, while the enactment of the Fair Share Act is a significant step forward for Pennsylvania tort law, Governor Corbett called it "just the first step in comprehensive legal reform."

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If you have any questions or comments regarding this information, or would like to discuss the information further, please contact the author Brendan B. Kelly at 412-392-5255 or send an e-mail to bkelly@dmclaw.com.