

LITIGATION
ALERT

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COURT STRIKES DOWN STATUTE ABOLISHING JOINT AND SEVERAL LIABILITY IN PENNSYLVANIA

On July 26, 2005, the Commonwealth Court of Pennsylvania declared Pennsylvania's Fair Share Act invalid because it was enacted in violation of the Pennsylvania State Constitution. *DeWeese v. Weaver*, 2005 WL 1719711 (Pa. Commw. Ct. July 26, 2005).

The Act, which was passed in June 2002, abrogated the traditional joint and several liability rule in negligence and strict liability cases in Pennsylvania. Under the previous rule, any one defendant in a multiple-defendant case could be held responsible for the entire damages award, regardless of that defendant's relative degree of culpability. The Fair Share Act dramatically changed this rule to require that any defendant who was less than 60% at fault could only be held liable for its proportional share of any damages award. In other words, under the Act, a jury would need to allocate the degree of fault among multiple defendants (including absent parties), and apportion any damages based on the allocation of fault. This change dramatically reduced the potential exposure of minor defendants in multiple-defendant tort cases and was seen as a measure of fairness to deep-pocket defendants that played relatively minor roles in the incidents giving rise to those cases.

The Act was challenged in the Commonwealth Court by a group of Pennsylvania legislators. The legislators successfully argued that because the Act was passed as part of a bill concerning DNA testing of sex offenders, it violated the "single subject" requirement of the

Pennsylvania State Constitution, which bars legislation concerning unrelated topics from being joined in the same bill. In granting the legislators' motion for summary judgment, the Commonwealth Court found that there was no "proper legislative relation" between the Fair Share Act portion of the bill and the original bill's focus on DNA testing for incarcerated sex offenders.

Although it is not clear yet whether the Commonwealth will appeal this decision to the Pennsylvania Supreme Court, it has an automatic right to do so. The Supreme Court previously declined to review a similar ruling concerning the Fair Share Act by a judge in the Court of Common Pleas. A number of bills have been introduced in the current session of the Pennsylvania General Assembly that, if passed, would re-enact the provisions of the Fair Share Act in a form that would satisfy the Pennsylvania Constitution's single-subject requirement. See S.B. 563, 2005 Gen. Assem., Reg. Sess. (Pa. 2005); S.B. 435, 2005 Gen. Assem., Reg. Sess. (Pa. 2005); H.B. 60, 2005 Gen. Assem., Reg. Sess. (Pa. 2005); H.B. 138, 2005 Gen. Assem., Reg. Sess. (Pa. 2005); H.B. 1346, 2005 Gen. Assem., Reg. Sess. (Pa. 2005). For the time being, however, it appears that Pennsylvania remains a joint and several liability state.

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