

KD Alert: Goodbye, Joint and Several Liability!

The Fair Share Act Brings Pennsylvania into the Majority
By: Anna M. Darpino, Esq.
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Under Pennsylvania's current scheme of joint and several liability, a defendant who is found responsible for as little as 1% of an injury or loss can be held liable for 100% of the damages owed to the injured – making that defendant "jointly liable" with the more responsible defendant(s).

*Pennsylvania's application of joint and several liability has been the target of legislative issues for nearly a decade. In 2002, the Fair Share Act was passed by the Pennsylvania legislature but thereafter deemed unconstitutional in 2005. *DeWeese v. Weaver*, 2005 WL 1719711 (Pa. Commw. July 26, 2005), *aff'd*, *DeWeese v. Cortes*, 588 Pa. 738, 906 A.2d 1193, 2006 Pa. LEXIS 1841 (2006). Shortly thereafter, the Fair Share Act was adopted again by the legislature but vetoed by then-Governor Edward Rendell.*

The Pennsylvania House of Representatives again voted to pass the Fair Share Act, which will bring Pennsylvania into the majority of states who have eschewed the harsh and archaic application of joint and several liability. On June 28, 2011, Governor Tom Corbett signed the bill into law, making Pennsylvania one of approximately 40 states to have passed laws under which the defendants are only liable for the share of damages proportional to their problem.

In its current form, the Fair Share Act provides that defendants found liable for less than 60% of the total problem of all defendants will only be required to pay their proportional share. The Fair Share Act's proportional liability does not apply where:

- The defendant has been determined by a jury to be responsible for more than 60% of the combined fault attributed to all defendants;*
- The cause of action is based on misrepresentation;*
- The defendant has acted intentionally;*
- The case arises from an actual or threatened release of a hazardous substance under Section 702 of the Hazardous Sites Cleanup Act; and*
- The conduct involves a violation of Section 497.*
- The Act is effective immediately but will not be applied retrospectively. It is not yet clear whether the new law will be met with challenges. The passage of the Fair Share Act is nonetheless a victory for small and large business owners in Pennsylvania who will now be better positioned to significantly minimize potential damages awards.*

For more information on this matter, contact the attorneys in KD's Pennsylvania office.