

Act 17 of 2011 – Changes to Joint & Several Liability
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On June 28, 2011, Governor Corbett signed into law as Act 17 of 2011 (“Act 17”) Senate Bill 1131, which changed Pennsylvania’s rules regarding “joint and several” liability. This article highlights the important features of Act 17.

THE OLD LAW:

By way of brief background, prior to Act 17, “joint and several” liability applied where more than one defendant was liable to a plaintiff for her damages. This allowed the plaintiff to recover the entire damages award from one of the liable defendants, rather than collecting a judgment from the defendants based upon their pro rata share of the liability.

Example: Plaintiff X was injured as a result of the combined negligence of Defendants A and B. A jury determined that Defendant A was 70% at fault and Defendant B was 30% at fault and awarded Plaintiff X total damages of \$100,000. Plaintiff X could execute the judgment against Defendant B for the full \$100,000, even though Defendant B was only 30% at fault. (Note: Defendant B was then permitted to sue Defendant A for the \$70,000 that it had to pay on Defendant A’s account, in what is known as a “contribution” claim).

This doctrine disadvantaged defendants who were viewed as deep pockets because it allowed a plaintiff to recover the full amount of a judgment against a deep-pocket defendant who may have been only minimally at fault, and then burdened that deep-pocket defendant with having to recover “contribution” from a more liable co-defendant (who may be unable to pay). This was a significant issue for governmental entities as they are generally viewed as deep-pocket defendants, subject to the limitations on damages under the Political Subdivisions Tort Claims Act.

THE NEW LAW (Act 17):

Act 17 now makes liability only “several” and not “joint” in most cases so that, in the previous example, Plaintiff X would be awarded a separate judgment of \$30,000 against Defendant B and would not be able to recover all \$100,000 of damages from Defendant B. There are, however, exceptions where a defendant will continue to be held jointly and severally liable:

- **Where the defendant is 60% or more at fault for the plaintiff’s injuries.** Using the prior example, Defendant A remains jointly and severally liable to Plaintiff X for the full \$100,000 damages award because Defendant A was found 70% at fault. If Plaintiff cannot (or opts not to) recover the \$30,000 from Defendant B, Defendant A can be held responsible for the full amount.

- **Where a defendant is liable for an intentional misrepresentation.** Where a defendant is found liable for fraud, then the percentage of that defendant's fault among other defendants is irrelevant; the defendant will be jointly and severally liable for the plaintiff's damages.¹
- **Where a defendant is liable for an intentional tort.** This includes claims that are not treated as negligence actions under Pennsylvania law, such as actions for libel, slander, false imprisonment, assault, intentional infliction of emotional distress, etc.
- **Where a licensee is liable under the Liquor Code for injuries caused by a patron who was served alcohol while visibly intoxicated.** If a bar owner serves a visibly intoxicated patron, and that patron then injures a person, the bar owner will be held jointly and severally liable to the plaintiff injured by the intoxicated patron.
- **Where a defendant is liable for a release or threatened release of a hazardous substance in violation of the Hazardous Sites Cleanup Act.**

Here are some other important aspects of Act 17:

- **Act 17 retains a defendant's right to contribution against other defendants.** Act 17 does not eliminate the right of contribution among liable defendants. Using the prior example, if Defendant A (who was only 70% at fault) actually paid the full \$100,000 judgment to Plaintiff X, then Defendant A retains the right to recover \$30,000 from Defendant B (who paid nothing) in a contribution action.
- **Act 17 gives the right to have a jury determine the percentage of fault of a released or non-joined party.** Using the prior example, if Defendant A separately settled his case with Plaintiff X prior to trial, but the case proceeds to trial against Defendant B, then Act 17 allows Defendant B to present evidence of Defendant A's fault and to have the jury apportion fault accordingly. If the jury then awards Plaintiff X \$100,000 in damages and finds Defendant A to be 70% at fault and Defendant B to be 30% at fault, Plaintiff X is entitled only to a \$30,000 judgment against Defendant B (but no judgment against Defendant A, whom she previously released). The only exception is when an employer is immune from liability under the Workers' Compensation Act's exclusivity provisions, then evidence of the employer's fault cannot be presented to the jury.
- **Act 17 applies only to claims that arise after June 28, 2011.** Any claims that occurred prior to June 28, 2011 (meaning the accident or incident which results in a lawsuit, not the filing of the lawsuit itself) are not subject to Act 17's changes.

WHAT DOES THIS MEAN TO YOU?

¹ Under the Political Subdivisions Tort Claims Act, a municipality cannot be sued for fraud or other intentional torts, but individual employees and elected officials can be sued for such acts and municipalities can be required to indemnify the employees and officials in certain circumstances. The PPT coverage documents may limit or exclude coverage for such claims.

For current cases and lawsuits filed related to incidents occurring before June 28, 2011, this change to law will mean nothing. The old rule of joint and several liability will apply.

For claims arising after June 29, 2011, the change is generally viewed as a good change for defendants as plaintiffs will be less able to obtain a full verdict amount from a marginally liable defendant (with the resultant increase in costs related to the defense of such cases) and perhaps plaintiffs' lawyers will be less likely to pursue to trial these types of claims against marginal, but deep-pocket defendants. Practically, the change should have little impact on how you do business from a risk management perspective. The message to your employees remains "we need to avoid negligence in our operations", not "marginal negligence is now O.K."