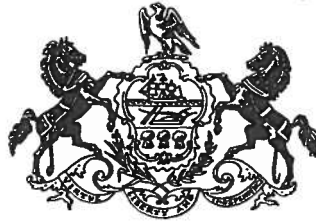


MEMO



JAN 07 2011

Senate of Pennsylvania

January 6, 2011

TO: ALL SENATORS
FROM: Stewart J. Greenleaf *Stewart*
SUBJECT: Cosponsorship -- **Joint and several liability**

I am introducing legislation amending section 7102 of the Judicial Code, Title 42 of the Pennsylvania Consolidated Statutes, relating to comparative negligence, to abolish joint liability for any defendant whose percentage share of liability is less than the percentage share of fault attributed to the plaintiff. The plaintiff may not recover damages from such a defendant in excess of that defendant's share of fault.

As a matter of background, the doctrine of joint and several liability applies when there are multiple defendants in a civil action. Each defendant who is negligent is individually responsible for the entire amount owed to the plaintiff but a defendant who pays the entire amount has the right of contribution from the nonpaying defendants. The doctrine of joint and several liability is meant to provide a safety net for injured victims by preserving the right to recover the entire amount of a verdict from any wrongdoer. However, as a matter of fairness, a defendant whose percentage share of fault is less than the plaintiff's share of fault should not be liable for more than his share.

Here is an example of how my legislation would work in practice: *The jury finds the plaintiff 25% at fault for his own injuries, defendant A 20% at fault, and defendant B 55% at fault.* Under my legislation the plaintiff may only recover 20% from defendant A because defendant A is less at fault than the plaintiff. However, the plaintiff may recover jointly from defendant B because defendant B is more at fault than the plaintiff. If defendant A is unable to pay his 20% share but defendant B is able to pay, the plaintiff may make a full recovery from defendant B. This would include defendant B's 55% plus defendant A's 20%.

The comparative negligence doctrine is the principle that a plaintiff who is at fault to some degree for his own injuries may recover damages but the plaintiff's recovery is reduced proportionately by the plaintiff's degree of fault. The plaintiff's negligence is compared to the negligence of one or more defendants. My legislation codifies the principle that a defendant who is less at fault than the plaintiff should be responsible only for his share of the liability. But, between a plaintiff and a defendant who is more at fault than the plaintiff, the defendant should be responsible for making the plaintiff whole.

I most recently introduced this legislation as Senate Bill 230 during the 2007-2008 legislative session. The legislation was considered during the 2005-2006 session as Senate Bill 563.

If you would like to cosponsor this legislation, please contact Pat Snively of my office by e-mailing her at psnively@pasen.gov.