

TESTIMONY BEFORE HOUSE AND SENATE

Good morning. My name is Carol Steinour, and I am a partner at the law firm of McNees Wallace & Nurick here in Harrisburg. I am a trial lawyer. I have represented both plaintiffs and defendants. I have obtained jury awards for plaintiffs who have been injured, and I have obtained jury verdicts for defendants accused of some type of negligence. It is because of my experiences as a trial lawyer that I am happy to have the opportunity to testify this morning about this issue. In my belief, Pennsylvania's civil court system has become a system grossly out of balance, ignoring the relative fault of defendants in favor of compensating plaintiffs, even plaintiffs who are more at fault than defendants.

Abolishing joint and several liability will restore some balance to our system by requiring a defendant to pay the percentage of liability that has been assessed against him by a jury. It will make a defendant pay his share of the verdict, not everyone else's share.

It might be helpful to talk a little bit about joint and several liability, and its role in the evolution of our civil justice system. It has been claimed by some that this doctrine is the product of "centuries of sound tradition and legal precedent." And while it is true that the doctrine made sense at some point, it no longer does. Joint and several liability is a tort doctrine, adopted in the late 1800's here in PA, that requires that every defendant found liable for some type of negligent behavior to be responsible for paying 100% of the damages, regardless of the percentage of his negligence. "Joint" means that each defendant is jointly liable; "several" means that each defendant is separately liable for 100% of a judgment (or verdict). At the time this doctrine was adopted, Pennsylvania had another doctrine which balanced the harshness of joint and several liability: contributory negligence. Under contributory negligence, if an injured party plaintiff was found to have been even 1% negligent and a defendant 99% negligent, the plaintiff

could not recover at all for his damages. In 1976, Pennsylvania abolished contributory negligence and adopted a system of comparative negligence. Under the law of comparative negligence, a plaintiff can be up to 50% responsible for his own accident, and he can recover from defendants who have also been found negligent. Unfortunately, Pennsylvania did not at the same time abolish joint and several liability.

So, we now have a system which is out of balance. Under our current state of affairs, a defendant who is less liable than a plaintiff could be held responsible for paying all of plaintiff's damages (reduced by plaintiff's percentage of negligence).

But that situation is not the worst of it. Our system of joint and several liability encourages plaintiffs to cast a net and drag in as many parties as possible, hoping to extract as large a settlement as possible. Plaintiffs especially target the "deep pockets" regardless of that person's involvement causing the harm. For these deep pockets, they know that they will have to pay 100% of a verdict regardless of what percentage of liability a jury assesses against them. To avoid that risk, they end up paying huge amounts of money in settlement to avoid having to pay even bigger amounts following a trial. This is the calculated risk that individuals and businesses have to face every day.

The Plaintiffs' bar attempts to simplify this issue by arguing that our system is designed to protect the innocent victim. They also argue that because we should be focused on protecting the innocent victim, 100% of the risk should be shifted onto the shoulders of the "culpable" or the "recalcitrant" defendant.

That's a gross over-simplification of how this doctrine plays out in the real world.

A person is injured, through no fault of his own, by a single person, acting alone. This may even have been a criminal act. The victim is seriously injured. The defendant has no

insurance, assets, and may even end up in jail. What to do? Look for someone, anyone, who might have involvement, no matter how far removed or tangential, so long as they have assets. If you can construct a theory of liability against this individual, or most likely a company, you will most likely be able to extract a large settlement from him because of the threat of joint and several liability. A company will pay more than its fair share in settlement to avoid having to pay even more money should the case go to trial.

Yesterday, I had the privilege of testifying with two business people before the Senate Judiciary Committee: Mike Cortez from Sheetz, and Kirk Liddell from Irex Corporation. Both gentlemen talked about the that impact joint and several liability has had and continues to have on their businesses in this Commonwealth. Mr. Cortez emphasized the commitment that his company, Sheetz, has to doing business in the Commonwealth, but also urged that we reform the tort system. He pointed out that joint and several liability shifts the responsibility for an injury away from those who actually cause the harm. Plaintiffs target businesses based on their deep pockets, not their actions. These defendants are then forced to pay because of the strength of their balance sheets.

As Mr. Cortez also points out, we need to keep in mind that Pennsylvania is one of only a handful of states that has not passed some form of tort reform in the last twenty years. While it is absolutely true that there are many factors that must be considered by a company seeking to expand, to build, or to invest, it is also true that companies cannot ignore the fairness, or more precisely the lack thereof, of our tort system and of joint and several liability when making their decisions. If you had the choice of locating either in a state where you could be forced to pay for the harm caused by someone else, or in one where you pay only for the harm you caused, where would you go?

Remember, too, that joint and several liability cost all of us money. Companies like AC&S, Mr. Liddell's company, had to pay out such large sums of money that it had to declare bankruptcy. This costs Pennsylvania taxes and jobs. Some companies move, expand elsewhere, or decide not to come to Pennsylvania at all. It affects businesses who choose to stay here. So when you hear the plaintiff's bar say that it is more equitable to shift the loss onto the "stream of commerce," remember that means your local hardware store, the drycleaners, the hairdressers, the art shops, the local business men and women who make up the fabric of our economy here in Pennsylvania.

Joint and several liability increases the cost of doing business in Pennsylvania. It allows for unfair and unjust verdicts and settlements against defendants who may have little or nothing to do with an injury suffered by a plaintiff. It's time to restore balance to the system and protect Pennsylvania jobs.