

THE INSURANCE FEDERATION OF PENNSYLVANIA, INC.

Public Comments

Prepared for the

House Judiciary Committee

on

Joint and Several Liability

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GOOD AFTERNOON, AND THANK YOU FOR THE OPPORTUNITY TO BE HERE TODAY. I AM SAM MARSHALL, PRESIDENT OF THE INSURANCE FEDERATION OF PENNSYLVANIA. THE FEDERATION IS A NON-PROFIT TRADE ASSOCIATION REPRESENTING INSURERS OF ALL SHAPES AND SIZES DOING BUSINESS IN PENNSYLVANIA. "DOING BUSINESS" DOESN'T JUST MEAN INSURING PEOPLE AND COMPANIES - IT ALSO MEANS INVESTING IN THIS COMMONWEALTH AND EMPLOYING PEOPLE HERE. FOR MANY OF OUR MEMBERS, IT ALSO MEANS BEING HEADQUARTERED HERE.

I AM HERE TODAY TO RECOMMEND YOUR SUPPORT FOR THE REFORM OF PENNSYLVANIA'S JOINT AND SEVERAL LIABILITY LAW. WE WERE PART OF THE DEBATE IN THE SENATE YESTERDAY, AND I'D LIKE TO AMPLIFY ON OUR COMMENTS THERE.

THIS ISSUE IS OFTEN DEBATED IN TERMS OF FAIRNESS. PROPONENTS OF JOINT AND SEVERAL LIABILITY CLAIM IT IS FAIR - THAT IT IS THE RESPONSIBILITY OF WRONG-DOING DEFENDANTS, NOT THE VICTIM, TO APPORTION THEIR OWN SHARES OF FAULT AMONG THEMSELVES. PROPONENTS OF REFORM CLAIM THE CURRENT LAW IS UNFAIR - THAT EVERY DEFENDANT SHOULD BE RESPONSIBLE FOR HIS SHARE, NOT FOR THE CONDUCT OF SOMEBODY ELSE. BOTH SIDES DRAW UP SCENARIOS WHERE A GENUINELY SYMPATHETIC PARTY WOULD SUFFER UNDER THE OTHER SIDE'S SYSTEM.

I DON'T ENVY YOUR TASK OF DECIDING WHAT IS FAIR AND NOT FAIR. FOR WHAT IT IS WORTH, I THINK FAIRNESS CONSIDERATIONS ARGUE IN FAVOR OF REFORMING THE CURRENT STANDARD: IN THE FIRST PLACE, THE REFORM MEASURE DOES NOT LET ANYBODY PAY LESS THAN HIS FAIR SHARE OF RESPONSIBILITY. SECOND, OUR LAWS ARE PRETTY STRONG IN NOT ALLOWING ANYBODY TO ESCAPE DISCOVERY OR JURISDICTION.

AND THIRD, INTENTIONALLY OR NOT, OUR JOINT AND SEVERAL LIABILITY STANDARD HAS STARTED TO RESULT IN TWO CLASSES OF VICTIMS: THE AMOUNT OF LIABILITY IS ALL TOO OFTEN CALCULATED NOT BY THE AMOUNT OF DAMAGE TO THE VICTIM, BUT BY THE AMOUNT OF RESOURCES OF THE RICHEST DEFENDANT.

BUT THIS ISSUE IS ABOUT MORE THAN THE FAIRNESS TO AN INDIVIDUAL PLAINTIFF OR DEFENDANT IN A PARTICULAR CASE. IT IS ALSO AN ISSUE OF ECONOMIC DEVELOPMENT, AND THAT IS WHAT I'D LIKE TO TALK ABOUT TODAY.

WE SEE IT AS INSURERS, AND WE SEE IT AS INVESTORS AND EMPLOYERS: A STATE'S LIABILITY LAWS PLAY AN INCREASINGLY MAJOR ROLE IN AN EMPLOYER'S DECISION OF WHETHER TO GROW OR INVEST IN THAT STATE. YOU HEAR A LOT ABOUT EVEN SMALL BUSINESSES BEING NATIONAL OR INTERNATIONAL IN SCOPE, AND

THAT IS TRUE. BUT THE LIABILITY EXPOSURE FOR ALL BUSINESSES REMAINS LARGELY SET ON A STATE-BY-STATE BASIS. SO WHEN BUSINESSES DECIDE WHERE TO GO AND GROW, THEY LOOK AT THE LIABILITY LAWS IN THOSE STATES - BECAUSE THAT LIABILITY EXPOSURE IS A LARGE PART OF THEIR OPERATING COSTS.

THE TRUTH IS, PENNSYLVANIA'S LIABILITY LAWS - OR AT LEAST OUR LIABILITY EXPOSURE - ARE OUT OF WHACK WITH THOSE OF MOST OTHER STATES. THE TRUTH IS, AMONG PLAINTIFF AND DEFENSE LAWYERS ACROSS THE COUNTRY, PENNSYLVANIA HAS THE REPUTATION AS A PRETTY GOOD PLACE TO SUE, A PRETTY BAD PLACE TO BE SUED - NOT A PARTICULARLY HELPFUL REPUTATION OR SLOGAN IF YOUR GOAL IS TO PROMOTE ECONOMIC GROWTH.

SOME OF THIS IS A REGIONAL PHENOMENON WITHIN THE COMMONWEALTH: EVEN WITH ONE LIABILITY STANDARD THROUGHOUT THE COMMONWEALTH, THERE IS A DRAMATICALLY HIGHER LIABILITY EXPOSURE - MEANING THE LIKELIHOOD OF BEING SUED AND THE AMOUNT OF ANY VERDICT - IN SOUTHEASTERN PENNSYLVANIA THAN ELSEWHERE IN THE COMMONWEALTH. THAT IS REALLY A VENUE PROBLEM, AND IT IS A TOPIC FOR ANOTHER DAY.

BUT MUCH OF THIS IS OUR JOINT AND SEVERAL STANDARD. THAT STANDARD IS FAR HARsher ON DEFENDANTS THAN IN MOST OTHER STATES. YOU CAN CAST THIS IN A VARIETY OF TERMS: OPPONENTS OF ANY REFORM WOULD SAY OTHER STATES ARE TOO TOUGH ON PLAINTIFFS AND TOO EASY ON DEFENDANTS.

I'D SAY OTHER STATES HAVE ENACTED LAWS THAT PROMOTE STABILITY AND PREDICTABILITY IN ASSESSING LIABILITY AMONG PARTIES, WHILE PENNSYLVANIA CONTINUES TO WORK UNDER AN ANIQUATED STATUTE THAT PROMOTES THE SEARCH FOR THE "DEEP POCKET" RATHER THAN A FAIR AND EQUITABLE DETERMINATION OF LIABILITY AND APPORTIONMENT OF THAT LAIBILITY AMONG PARTIES.

BUT HOWEVER YOU WANT TO LOOK AT IT, OUR LIABILITY LAWS - AND SPECIFICALLY OUR JOINT AND SEVERAL STANDARD - ARE SIGNIFICANT DRAWBACKS TO BRINGING BUSINESS AND INVESTMENT HERE, AND IN MAKING BUSINESS GROW HERE.

THESE ARE TOUGH ECONOMIC TIMES, WITH EMPLOYERS AND INVESTORS FACING CONSIDERABLE UNCERTAINTY. REFORMING PENNSYLVANIA'S JOINT AND SEVERAL LIABILITY STANDARD SENDS A CLEAR MESSAGE TO EMPLOYERS AND INVESTORS THAT THIS COMMONWEALTH IS DOING WHAT IT CAN TO REDUCE THAT

UNCERTAINTY BY PROVIDING STABILITY AND PREDICTABILITY IN ITS LIABILITY LAWS. THAT MESSAGE IS ESSENTIAL IF THIS COMMONWEALTH'S ECONOMY IS TO BE ONE OF GROWTH, COMPETITION AND OPPORTUNITY.

SOMETIMES WHEN THIS MEASURE IS DEBATED, IT GETS FRAMED AS AN INSURANCE ISSUE - GENERALLY BY ITS OPPONENTS. I UNDERSTAND THAT. IT IS HARD TO OPPOSE A MEASURE THAT PROMOTES RESPONSIBLE ECONOMIC GROWTH. IT IS EASY TO BASH THE INSURANCE INDUSTRY.

THE TRUTH IS, THIS ISN'T AN INSURANCE ISSUE, AND I HOPE YOU DON'T LET INDUSTRY BASHING OBSCURE THE ECONOMIC DEVELOPMENT THAT IS THE REAL GOAL OF JOINT AND SEVERAL REFORM. FOR MANY LINES OF INSURANCE, THIS REFORM WILL HAVE NO IMMEDIATE IMPACT. AND FOR SOME LINES, OR SOME INSUREDS, IT COULD EVEN MEAN HIGHER - BUT FAIRER - PREMIUMS.

BUT WE DO HAVE A STAKE IN THIS MEASURE. INSURERS ARE LIKE ANY OTHER BUSINESS. WE INVEST AND DO BUSINESS IN STATES THAT HAVE GOOD EDUCATION SYSTEMS, A QUALIFIED WORKFORCE, A SOUND INFRASTRUCTURE, FAIR TAX LAWS, SOUND REGULATORY POLICIES AND STABLE AND PREDICTABLE LIABILITY LAWS.

THOSE ARE ALL CORNERSTONES FOR CREATING A STRONG MARKETPLACE FOR INSURANCE AS MUCH AS ANY OTHER BUSINESS. I CAN'T SAY THIS MEASURE WILL LOWER RATES ACROSS THE BOARD OR BRING GOOD INSURERS INTO EVERY SEGMENT OF THE INSURANCE MARKETPLACE. BUT I CAN SAY, BASED ON YEARS OF EXPERIENCE HERE AND BASED ON RESULTS IN OTHER STATES, THAT GOOD MARKETS ATTRACT GOOD INSURERS - BAD MARKETS ATTRACT NOBODY OR, WORSE, BAD INSURERS. REFORM OF OUR JOINT AND SEVERAL LIABILITY STANDARD IS ONE WAY OF MAKING PENNSYLVANIA A BETTER INSURANCE MARKETPLACE.

PENNSYLVANIA HAS DONE MANY GOOD THINGS ON THE TAX AND REGULATORY SIDES OVER THE PAST FEW YEARS, AND CONSUMERS - INCLUDING OUR POLICYHOLDERS AND EMPLOYEES - HAVE BENEFITTED. BUT MORE NEEDS TO BE DONE: OUR LIABILITY LAWS NEED TO BE MADE MORE STABLE AND PREDICTABLE, OR AT LEAST BROUGHT IN LINE WITH THOSE OF MOST OTHER STATES. THE REFORM OF PENNSYLVANIA'S JOINT AND SEVERAL LIABILITY LAW IS AN IMPORTANT PART OF THAT, AND A REFORM WE SUPPORT.

I'VE STAYED AWAY FROM THE SPECIFICS OF ANY REFORM. THERE ARE OPTIONS, RANGING FROM A COMPLETE ABOLITION TO SOME SORT OF MIDDLE GROUND. MY EXPERIENCE IS THAT HEARINGS BEFORE LEGISLATIVE COMMITTEES ARE BAD PLACES IN WHICH TO NEGOTIATE

OR COMPROMISE, AND I THINK IT IS TOO SOON FOR THAT IN ANY EVENT. FOR NOW, WE THINK THE FIRST QUESTION IS WHETHER THIS COMMITTEE IS COMMITTED TO REFORMING OUR JOINT AND SEVERAL LIABILITY STANDARD TO REMAIN COMPETITIVE WITH OTHER STATES IN ENCOURAGING ECONOMIC GROWTH, WHILE STILL ENSURING FAIR ACCESS AND RELIEF FOR PLAINTIFFS. TOUGH AS IT MAY BE TO DRAFT THE DETAILS OF ANY BILL, IT WON'T BE THAT TOUGH IF YOU HAVE A COMMITMENT TO REFORM.

I WOULD LIKE TO OFFER ONE OBSERVATION FROM YESTERDAY'S SENATE HEARING. THE TRIAL LAWYERS DID A PRETTY GOOD JOB. THEY CLAIMED REFORM EFFORTS WOULD OVERTURN A "MORAL EQUATION" 300 YEARS IN THE MAKING, AND THAT COUNTLESS INNOCENT VICTIMS WOULD SUFFER. SOUNDS GOOD, BUT IT DOESN'T STAND UP TO THE FACTS: MOST OTHER STATES HAVE ENACTED AT LEAST SOME LEVEL OF JOINT AND SEVERAL LIABILITY REFORM, AND THEY HAVE DONE SO WITHOUT THROWING THEIR OWN SCALES OF JUSTICE INTO A MORAL QUANDRY, AND WITHOUT A HUGE OUTCRY FROM INNOCENT VICTIMS.

AGAIN, THANK YOU FOR THE CHANCE TO BE HERE TODAY. I AM HAPPY TO ANSWER ANY QUESTIONS.