

STATEMENT
JOINT AND SEVERAL LIABILITY

May 14, 2002

House Judiciary Committee
Hearing
Harrisburg, PA

John M. Ulrich, Jr.
Collens Wagner Insurance Agency
PO Box 3307
York, PA 17402
717/757-4633
717/757-3070 Fax

**Representing the York County Chamber of Commerce and the Independent
Insurance Agents of PA**

I am Jack Ulrich, owner of Collens Wagner Insurance Agency in York, Pennsylvania. This is a full-service agency dealing both with personal lines (homeowner's and auto) as well as commercial (Workers' Compensation and general liability). I also carry a specialty church insurance program and insure a public entity in York, which includes a nursing home. Thank you for permitting me to provide you with this written statement for the record.

I serve as legislative chairman for the Independent Insurance Agents of Pennsylvania (IIAP), an association representing independent insurance agencies in Pennsylvania who offer choices from more than one insurance company, and as past chairman of the York County Chamber of Commerce. The York County Chamber of Commerce has over 2,200 business members. These two affiliations come together when we talk about tort reform. Liability insurance is a necessary expense in doing business. Tort reform or the lack of it impacts what businesses and municipalities pay for insurance. Consumers and taxpayers are the ones who pay that price.

In today's business climate, some businesses express paranoia about government in general and a mistaken belief that the General Assembly is full of lawyers who would never pass meaningful tort reform. Some business owners have even repeated the rumor to me that this hearing is simply window dressing meant to delay action. I am happy to say that those people are wrong.

I was delighted to see the General Assembly take decisive action on medical malpractice insurance and am grateful that the Committee has convened this hearing to let interested parties such as myself come forward and express our points of view. Hopefully, these statements will help propel the issue towards a quick vote in June.

Both the York County Chamber of Commerce and the Independent Insurance Agents of Pennsylvania endorse Senate Bill 1376 and any comparable House legislation. As a York County businessman, I really appreciate the leadership shown by Senators Hal Mowery and Jeff Piccola, each of whom has a part of York County. York County's other Senators, Terry Punt, Mike Waugh, and my personal Senator Gib Armstrong are all sponsoring the bill. The York Chamber and the IIAP value their advocacy on behalf of the business community and consumers who ultimately foot the bill when tort reform does not occur. When House legislation gains momentum, I expect to see the York House Delegation play an active role as well.

Joint and several liability doctrine penalizes innocent parties. I call it a doctrine of money flows where the tort goes. If someone files a lawsuit against someone who has wronged him, it is understandable that he or she would go after the person or business responsible. The judicial system will sort out who is wrong and who is right.

I have faith in the American judicial system that more often than not, it will do the right thing.

Some recent changes have encouraged my belief in the system. The Senate's passage of Senate Bill 406 some months ago and the adoption of a major new rule by the State Courts will hopefully discourage frivolous lawsuits. America's judicial system has overall tried to keep its eye on the ball—trying to achieve justice.

But something is seriously wrong with a system that inflicts damage on those with little responsibility. The problem with joint and several liability is that everyone becomes equally responsible to pay even if their involvement was minor. It is a case of suing everybody and then sorting out who has the ability to pay for the judgement.

In military terms, this would be called collateral damage. It occurs when a bomb aimed at one target also destroys lives and property of those nearby. Collateral damage is tragic and accidental. The problem with joint and several liability is that the collateral damage is not accidental. It is a doctrine that says, in effect, I will sue everyone for 100 percent of the damages until someone pays. It goes after all parties potentially involved in hopes of finding the deep pockets.

From a business perspective, many businesses live on the edge anyway. Profits are tight. Expenses are difficult.

With the threat of possible litigation even when the business is not responsible for the injury, the business must factor in the cost of attorneys and possible court action when doing a business plan.

This money devoted to a lawsuit that may or may not occur is like a sword hanging over the businessman's head. This takes away from resources that the business would otherwise use for expansion or job creation. The small business may or may not be able to pass the costs on to consumers because of hard economic times and the need to remain competitive.

Larger businesses certainly are prime targets for joint and several liability. Consider the insurance industry. In Pennsylvania, the insurance industry has billions in assets and contributes almost 500 million dollars to the Commonwealth every year in premium taxes. The state Insurance Department requires that a certain portion of insurance company assets be held back as reserves so that the amount of real spendable assets is not as great as the balance sheet would indicate. Insurance companies are prime targets under joint and several liability. When they are hit with a lawsuit-related claim, they cannot dip into those reserves because the state will not permit it. The Insurance Department has a legal responsibility to make sure insurance companies are solvent. So, what can a company do? Simple. They pass it back to businesses causing the claim drain with an increase in premium to try to get some of those losses back. Or, they cancel the business' insurance in mid-term after giving a 60 day notice required by law. Or, they raise the premium for everybody. Who loses? The business who pays more in premium and the business who finds itself in need of another insurance company and the business down the street that sees a premium increase.

Those who oppose repeal of joint and several liability who minimize jury verdicts as they did in the medical malpractice debate may be overlooking something else too. An insurance company (or business) may simply find that it is cheaper to reach an out of court settlement. It might cost less to settle for \$70,000 now versus taking one's chances in a Philadelphia jury where a decision might cost the company millions of dollars.

Settling out of court has a bad side effect because it encourages people to play the 'Legal Lottery'. Still, I understand where the companies are coming from when they agree to settle out of court even when the particular business was not principally responsible.

Municipalities are included under joint and several liability too. Suppose a traffic accident occurred when someone slowed down for a municipal holiday parade and was hit from behind. Who is responsible? The person who may have slowed too soon? The driver behind who may not have slowed quickly enough? Or the municipality who sponsored the parade? In this 1986 court case (Elder v. Orluck), joint and several liability doctrine made the municipality pay 100 percent even though its proportion of responsibility was only 15 percent. Why was the municipality forced to pay? Because it could. It had the deeper pocket thanks to tax dollars and was forced to pay. Or, to put it more precisely, taxpayers were forced to pay. The insurance company took the hit because after all, liability insurance is there for that purpose. But who paid for the increase in premium stemming from that claim? The taxpayers.

What additional service was not offered by the municipality because of the insurance premium increase? A uniformed officer? A new stop light at a dangerous intersection?

(Here is a scary Catch-22 for municipalities. Suppose a stoplight was not put in because of the insurance increase, and someone sued the municipality for not moving quickly enough to do so after an accident at that intersection. Maybe that is a little far-fetched and maybe it is covered under sovereign immunity. I'm not a legal expert in municipality law. Maybe this Catch -22 is a fear that municipal officials just have to live with. Under joint and several liability, it could happen couldn't it?)

Granted there are gray areas. An attorney wants damages paid to his or her client from whoever can be forced to pay them. Maybe it does not matter to the attorney who is more responsible but only that someone, anyone, pays. If that is a business or an insurer with the ability to pay even if they were not primarily responsible, so be it. I am not a lawyer. I am a businessman and an insurance agent who sees money being taken from parties with minor involvement to pay for the sins of those who were responsible. If justice is the goal, please do not allow collateral damage to the business community to continue because joint and several liability is allowed to remain. Please enact Senate Bill 1376 or comparable House legislation.

Thank you on behalf of the York County Chamber and the Independent Insurance Agents of Pennsylvania for permitting me this opportunity to present this statement into the record.