



New Enterprise Stone & Lime Co., Inc.

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Testimony of Bill Carr

Risk Manager

New Enterprise Stone & Lime Co., Inc.

Given before the Pennsylvania House of Representatives

Judiciary Committee

March 29, 2011

10:00 a.m.

My name is Bill Carr and for the past 21 years I have been the Risk Manager at New Enterprise Stone & Lime Co., Inc. "New Enterprise."

My responsibilities include overseeing the management of liability claims. In order to help control our cost of insurance protection, we have assumed much of the financial responsibility through large deductibles.

New Enterprise is a Heavy Highway contractor, construction material supplier and maintenance and traffic protection contractor. On the Heavy Highway side of things we produce and provide an array of general contracting services for governmental agencies and commercial and residential customers. Services include general contracting, grading, blacktop and concrete paving, drainage, bridge construction, and safety products and services. We build infrastructure that our citizens rely upon.

Our customers include Penn DOT and the Pennsylvania Turnpike Commission, for which we are one of the largest contractors in the state; additionally we work for many local municipalities and private owners. We employ approximately 2,700 in Pennsylvania and utilize many independent contractors to help us perform our work. Many of the independent contractors are small businesses and generally carry about \$1,000,000 of liability protection.

We believe the current law regarding joint and several liability with the "1 percent rule" distorts civil litigation in Pennsylvania by focusing the efforts of Plaintiffs on those with the ability to pay rather than those who may actually be responsible for causing an accident.

One recent case involved an independent truck driver we hired to haul millings from the project site to an off site location. He carried one million dollars of automobile liability protection (which is realistically the most coverage available to many small owner-operators.)

While at the job site, an employee of another contractor bent down in front of this truck while he was waiting for a load. The truck driver didn't realize this worker was in front of his truck and drove over this man who died from his injuries.

New Enterprise was named in the suit with allegations that we had responsibility to protect the other contractor's employee from the actions of our independent contractor. To defend the case, it cost over \$300,000 in legal fees.

The overwhelming focus of the one week trial was unfounded attempts to convince the jury that New Enterprise was at least 1% negligent. Ultimately, the jury found New Enterprise free from fault (0%) and the plaintiff to be 80% at fault, which barred recovery. Understanding that if found to be 1% at fault, we would have had to pay the difference between the truck driver's limits and a jury award, our carrier settled with plaintiff for \$1,000,000 before the verdict was read. (In this case, the carrier for the truck driver had tendered its limits before suit was filed. The entire litigation process was fueled by the potential windfall of establishing 1% negligence on New Enterprise.)

In another case involving the actions of an independent truck driver, the jury verdict was \$7,500,000. The plaintiff was found 25% at fault, which reduced the award to \$5,625,000. The truck driver was found to be 37% at fault and New Enterprise was found 38% at fault. The insurance carrier for the truck driver paid its limit of \$1,000,000 and our carrier paid \$4,625,000. Our 38% share of the verdict would have been \$2,850,000. Not only did New Enterprise pay more than 60% over our "fair share," but litigation was lengthy and an amicable resolution was prevented by the "1% rule."

These are just a few examples of how we believe the current law has distorted our civil justice system. Although the original intent of the "1% rule" was to assure injured parties

received compensation, the reality is that financially responsible businesses are targeted in unfounded lawsuits simply because of the 1% rule. As a result, the cost of risk to our company is substantially higher than the risk created by our organization's activities.

The total cost of risk for these unfair assessments and sometimes frivolous lawsuits are ultimately passed back to our customers including Penn Dot, the Pennsylvania Turnpike Commission, local municipalities and private industry in the form of more expensive products and services.

We applaud your efforts to return our civil legal system to a more fair system of justice by having responsible parties assessed on their percentage of fault and not their ability to pay.