

**TESTIMONY
PENNSYLVANIA HOUSE JUDICIARY
COMMITTEE
HB 1552**

OCTOBER 24, 2011

OFFERED BY SCOTT B. COOPER, ESQUIRE

SCHMIDT KRAMER P.C.

209 State Street

Harrisburg, PA 17101

717-232-6300

scooper@schmidtkramer.com

ON BEHALF OF THE PENNSYLVANIA ASSOCIATION
FOR JUSTICE

Chairman Marsico, members of the Committee and staff. Thank you for allowing the Pennsylvania Association for Justice to speak today. My name is Scott Cooper and I am an attorney and partner at the law firm of Schmidt Kramer P.C. in Harrisburg. I am also a member of the Pennsylvania Association for Justice (PaJustice). I represent victims injured or killed, and their families, mainly in motor vehicle accidents. I serve as Chair of PaJustice's Legislative Policy Committee and currently as its President-elect. I am a contributing editor to a leading treatise on the Pennsylvania Motor Vehicle Financial Responsibility Law, authored and argued several important and leading motor vehicle accident cases in the federal and state Appellate Courts and have spoken extensively on the

issue at seminars for several organizations. I also have litigated and tried to verdict many jury trials in this Commonwealth. I have also briefed and argued venue issues in different trial courts.

We welcome the opportunity to speak to the Committee today to elaborate why the Committee must take a careful look at HB 1552, understand why we are opposed to it, and recognize why it should not be voted out of this Committee. Not only is HB 1552 outside the powers of the General Assembly but it is not necessary and would lead to several logistical problems in the trial courts and adverse consequences to injured victims.

I will elaborate on just three (3) problems with the legislation and then be happy to answer any questions.

We oppose HB 1552 because:

1. The law is not necessary and does not allow for an injured victim to bring a claim in the county where he or she resides.

2. The law is inconsistent with other venue rules already established by the Supreme Court through its Rules Committee and would also lead to conflicts with jurisdiction that are unfair or impractical.

3. The law is unconstitutional because it usurps the rule making power of the Pennsylvania Supreme Court.

I will now elaborate a little more on each.

First, we oppose HB 1552 because it makes no provision for filing suit in the county where the plaintiff resides. The 2011 Legal Reform Coalition Survey found that 86% of the respondents thought that venue laws should be that lawsuits can only be filed in the county where the defendant resides or where the injury or damages occur. The 86% is an even higher percentage than those surveyed who wanted to change joint and several liability laws. Therefore, even the Legal Coalition Survey does not support this bill.

The American Tort Reform Association (ATRA) advocates venue reform but one which places venue "where they live or where they were injured, or

where the defendant's principal place of business is located." Only a few months ago, this same Committee was concerned with fairness when it came to joint and several laws so what is so wrong with allowing for a disabled plaintiff who is confined to a bed or wheelchair to file a lawsuit in their home county so that they do not need to potentially prosecute it across the Commonwealth. When legislation is not supported by 86% of our population or the major group which advocates this type of law then the legislation is not needed.

Second, the law is inconsistent with already established venue rules in Pennsylvania and results in logistical issues that would make claims impossible to litigate in some cases within Pennsylvania. The venue rules for District Magistrates already allow venue for injury claims if they are under a dollar threshold. The District Magistrate venue is that the claim can be filed where a Defendant resides or where the cause of action arose. Passing legislation like HB 1552 is obviously not consistent with this rule.

Also, the law does not cover the situation where a person is injured in an out-of-state accident with a Pennsylvania resident who caused the injury. This often happens in single car accidents. The law also lacks a definition or explanation on what the "cause of action arose" means which could actually expand venue beyond present rules where something is even delivered in a county and an injury occurs in a different county.

The proposed legislation also adds complications in uninsured and underinsured motorist claims. In more and more of these claims insurance policies mandate that a lawsuit be filed in the county where the insured resides. A litigant would have no way of determining where to file a case when there is a third party tortfeasor joined in a case which also involves an uninsured or underinsured motorist claim, and maybe even a bad faith claim.

Last, the law is unconstitutional because venue is a procedural and not substantive issue. Our Constitution vests the sole authority to pass procedural rules in the Supreme Court through its civil procedure rules committee.

Legislating venue usurps that power and is a violation of our Constitution.

PaJustice hopes that the Commonwealth of Pennsylvania's House Judiciary Committee will not start the process of passing unconstitutional legislation by voting out this Bill.

I have tried to briefly state why PaJustice opposes HB 1552 and should be very wary of even voting it out of Committee. Thank you for inviting us to share our concerns with you today. I would be more than happy to answer any questions the Committee members may have.