



Will Pennsylvania Finally Consistently Apply the Fair Share Act to All Asbestos/Strict Liability Matters?

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On July 31, 2018, the Pennsylvania Supreme Court granted the plaintiff's Petition for Appeal, in the case of Roverano v. John Crane, Inc., 177 A.3d 892 (Pa. Sup. Ct. 2017), where the Pennsylvania Superior Court (Appellate Division) ruled that Pennsylvania's Fair Share Act, 42 Pa.C.S. § 7102, applies to strict liability actions alleging asbestos-related disease. Specifically, in its published opinion, announced on December 28, 2017, the appellate court held that a defendant in an asbestos case could only be held liable for its share of apportionment, as opposed to its per capita share, and that in deciding apportionment, the jury must be permitted to consider the plaintiff's settlements with certain bankrupt entities.

By way of brief background, prior to passage of the Act, liability in multiple-defendant cases was allocated on a per capita basis. The Act though, passed in 2011, holds, in relevant part: 1.) a plaintiff is barred from recovering damages when his own negligence is greater than 50%; 2.) that each defendant is liable only for its share of the total liability unless a defendant is liable for more than 60% of the total liability in which case that defendant is jointly and severally liable; 3.) the jury, during apportionment of liability phase may consider evidence of settlements.

Ultimately, the Act removed allocation on a "per capita basis" and instead permitted the jury to apportion liability. However, the trial courts, particularly in Philadelphia County, were split on whether the Act applied to a strict liability matters, and, in some instances, still allowed for a per capita allocation.

In Roverano, the plaintiff worked at an energy plant for 30 years, during which time he was exposed to asbestos. He was eventually diagnosed with lung cancer, and sued 30 defendants to whose products he attributed his exposure to asbestos. Prior to trial, the trial court ruled that the Act did not apply to asbestos litigation because, the trial court felt, exposure to asbestos was not sufficiently quantifiable for apportionment. Two defendants in the Roverano matter tried the case to verdict. Eight total entities were on the verdict

sheet. The jury found six of the entities, including the two remaining defendants, liable for Plaintiff's injury. The trial court entered a judgment based on the two defendants' per capita share (as opposed to the Jury allocating liability), from which both defendants appealed.

In a matter of first impression, the Appellate court reversed the trial court regarding its interpretation of the Act. The court noted that "[n]othing in the [Fair Share Act] makes an exception for strict liability cases involving asbestos." *Id.* at 906. The appellate court further ruled that "the jury on remand must be permitted to consider evidence of any settlements...[including] with bankrupt entities in connection with the apportionment of liability." *Id.* at 909.

The State's Supreme Court's eventual decision will bring closure to the issue, but for now, the intermediary court's precedential opinion is binding and allows for defendants to argue to for a verdict that accurately reflects their respective fault.

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