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RAWLE'S REPORTS

THE NATION'S OLDEST LAW OFFICE

PENNSYLVANIA

1% RULE DEAD!

Gary N. Stewart

On June 28, 2011, Governor Tom Corbett signed tort reform legislation in Pennsylvania, limiting liability for negligence of defendants in certain civil court cases, such as trucking/motor vehicle actions. Supporters say this litigation will ensure that business owners or other defendants do not pay a disproportionate share of the damages for negligence that are awarded in civil court cases.

Under the prior law, any defendant who was found responsible for as little as 1% of the negligence was potentially liable to pay up to 100% of the total damages if the other co-defendants could not pay for their respective negligence that resulted in death or injury to a person or property. Thus, the "old" joint and several liability law allowed a plaintiff's lawyer to drag any potential "deep pocketed company" with possible little connection to the negligent act into the case and then argue that if they were found 1% at fault they would be required to pay the entire judgment.

New Law

The new law will only hold defendants found to be 60% or more at fault to be required to pay up to 100% of the damages if other co-defendants cannot pay. Accordingly, if a defendant is found less than 60%, they will only pay their share. However, a defendant can still be forced to pay 100% of the damages if (1) it was found to be liable for an intentional misrepresentation or intentional tort, (2) a release or threatened release of a hazardous substance under the Hazardous Sites Cleanup Act; or (3) a civil action in which a defendant has violated Section 497 of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code.

This law has taken a significant amount of time to enact and had been previously approved in 2002 and signed into law, but the Pennsylvania Supreme Court found fault in the legislative procedure used to adopt it. Thereafter in 2006, the General Assembly again approved the Fair Share Act, but the governor at the time vetoed it. The law became effective when Governor Corbett signed the legislation on June 28, 2011.

Gary N. Stewart is the resident partner in the Firm's Harrisburg office. He concentrates his practice in the area of commercial motor vehicle defense. He is admitted to practice in Pennsylvania, New Jersey, Massachusetts, Connecticut, Vermont and Rhode Island as well as before the U. S. District Courts for the Eastern, Middle and Western Districts of Pennsylvania, the District of New Jersey, the District of Massachusetts, the District of Rhode Island, the District of Connecticut and the U. S. Court of Appeals for the First and Third Circuits.

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DEFENSE VERDICTS

J. Fred Lorusso

J. Fred Lorusso, an attorney in Rawle & Henderson's Philadelphia office, recently obtained a defense verdict in a four-day commercial property damage case before a jury in the Philadelphia Court of Common Pleas. The lawsuit involved a plaintiff commercial entity's claim that it incurred significant business property damage and loss of business income as a result of flooding that occurred at a commercial property owned by the defendant landlord and leased to a non-party commercial entity. The case dealt with legal issues regarding contractual modifications of commercial leases as well as ancillary issues related to insurance coverage and proper allocation of commercial property and assets by and between related corporate entities.

The plaintiff commercial entity claimed that by virtue of its conduct and course of dealing with the defendant commercial landlord, it constructively "stood in the shoes" of a non-operational, related corporate tenant under its explicit commercial lease agreement with the defendant. More specifically, plaintiff claimed that the defendant landlord owed it various contractual and common law duties by virtue of the fact that defendant had accepted various payments drawn on the plaintiff's business account in satisfaction of the rental obligations under the lease agreement with the non-operational entity.

On behalf of the defendant landlord, Mr. Lorusso successfully argued to the jury that the conduct and course of dealing between the defendant landlord and a non-party commercial tenant did not demonstrate that the parties intended to modify the terms of the lease agreement. The jury did not accept that the defendant breached any duties owed to the plaintiff.

Mr. Lorusso also obtained a defense verdict in a rear-end passenger motor vehicle case before a jury in the York County Court of Common Pleas in York, Pennsylvania. The jury found in favor of our client, despite the fact that negligence had been conceded prior to the commencement of trial. More specifically, the plaintiff driver commenced a personal injury action and alleged that he sustained multiple cervical spine and lumbar spine disc herniations, with resultant pain and disability as a result of a rear-end collision with the defendant driver. At the time of the accident, the plaintiff was a restrained driver stopped at a red light. The defendant driver failed to stop his vehicle before it collided into the rear of plaintiff's pickup truck. The force of the collision, coupled with the plaintiff's body size, caused a fracture in the steel body frame of the pickup truck's passenger cabin which was clearly visible in post-accident photos. The defendant admitted negligence in the operation of his vehicle, but disputed causation of plaintiff's claimed damages.

During discovery, it was revealed that plaintiff had been involved in a similar rear-end collision prior to the subject accident. In fact, a careful review of plaintiff's medical records revealed that plaintiff had incurred similar injuries in both accidents. Nevertheless, diagnostic studies that were taken after the second accident revealed injuries that had not been diagnosed following the first accident. It was evident that plaintiff incurred new injuries as a result of the second accident. At trial, plaintiff endeavored to relate all of his injuries to the second accident only. This strategy proved fatal to the plaintiff's claim, as, in the end, it revealed plaintiff's lack of credibility. Conveniently,

one of plaintiff's expert witnesses, who had also been plaintiff's treating orthopedist, made no mention whatsoever of plaintiff's first accident in any of his office notes. When confronted on cross examination with this glaring omission, the orthopedist claimed that he "did not always need to know the whole story of a patient's history." This statement alone provided a useful weapon to the defense as Mr. Lorusso's theme to the jury centered on the belief that the plaintiff's "whole story" was, in fact, critical to their deliberations. In the end, the jury agreed with the defense and returned a defense verdict, despite the concession of liability and plaintiff's apparent objective injuries. The court denied plaintiff's post-trial motions.

J. Fred Lorusso concentrates his practice in general casualty defense litigation, including premises, motor vehicle, construction and product liability matters. Fred earned a B.S. from Boston College and a J.D. from Temple University School of Law in 2003. He is a member of the Bars of Pennsylvania and New Jersey, and the U.S. District Courts for the Eastern and Middle Districts of Pennsylvania. In 2008 Law & Politics Pennsylvania Super Lawyers magazine named Fred as a "Rising Star." Rising Stars are the top 2.5 percent of attorneys in Pennsylvania who are 40 years old or younger.

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NEW YORK

IF A TREE FALLS...

Robert A. Fitch

The Supreme Court of the State of New York, County of Westchester, granted summary judgment in favor of the City of Yonkers ("City") in a case involving a laborer who was struck by a falling limb while removing a large elm tree on property owned by the City, leaving him paralyzed from the chest down. Plaintiff filed suit against the City, the crane company assisting in the removal of the tree, and plaintiff's employer.

Robert Fitch, a partner in Rawle & Henderson's New York office, argued that the City should not be liable to plaintiff because his injury resulted from the very harm he had been hired, and was present on City property, to correct. In opposition, plaintiff argued that the City was negligent by failing to inform the plaintiff and his employer of the subject tree's propensity for shedding large branches and plaintiff could not have anticipated such a large branch falling from the elm tree as a risk associated with this removal project. Further, plaintiff cross-moved the Court for leave to serve an Amended Complaint asserting claims under Sections 200 and 241(6) of the New York State Labor Law arguing that both sections were applicable to the case. In opposition to the cross-motion, the City argued that neither section of the Labor Law was applicable to circumstances at issue, specifically the simple removal of a tree, the process for which the City maintained no authority to supervise and control.

In granting the motion for summary judgment on behalf of the City, the Court noted that plaintiff failed to establish any triable issue of fact to defeat the City's *prima facie* showing of entitlement to judgment. The Court agreed

with the City's argument that a plaintiff cannot seek damages for injuries which resulted from a hazard which is inherent in the very work that he had been hired to correct. Further, the Court rejected the plaintiff's argument that the City was negligent in its failure to have advised plaintiff and his employer regarding the tree's shedding of large branches, as the Court denied that such knowledge, even if withheld, in any way altered or increased what had been commonly recognized as usual dangers inherent in the removal of a large dead tree.

Finally, the Court also denied the plaintiff's cross motion, finding that, as argued in the opposition papers filed on behalf of the City, Section 200 of the Labor Law was inapplicable to the facts as the City maintained no control over the performance of the tree removal work or authority to supervise the work being performed. Similarly, the Court noted that the argument on behalf of the City, that Labor Law Section 241(6) applies only to claims arising out of construction, excavation or demolition work, was correct because tree removal does not fall within the defined scope of work covered by this section of the statute.

Plaintiff's last settlement demand was $4.5 million. Robert A. Fitch was assisted on the case by Rawle & Henderson associate Steven Montgomery.

Robert A. Fitch is a resident partner in the Firm's New York office. He concentrates his practice in the defense of product liability, professional and medical malpractice claims and commercial motor vehicle litigation. He is admitted to practice in the state and federal courts of New York as well as the U.S. Court of Appeals for the Second Circuit. He has been rated AV by Martindale-Hubbell. ***For more information, contact Robert at: 212.323.7070 or rfitch@rawle.com***

EDWARD FARMAN

Edward Farman

Edward Farman has joined Rawle & Henderson's New York office as Of Counsel. Farman will focus his practice in the areas of transportation, litigation, and insurance defense. He has represented motor carriers, warehousemen and their insurers nationwide for more than 30 years in matters involving cargo loss and damage and warehouse liability. Farman has also lectured extensively on cargo loss and damage issues.

Ed received his B.A. from the University of Pennsylvania and his LLB from the Columbia Law School. He comes to Rawle & Henderson from the New York firm of Schindel, Farman, Lipsius, Gardner & Rabinovich, LLP.

Farman is admitted to practice in New York. He is also admitted to practice before the U.S. Courts of Appeal for the Second, Third, Sixth, Eighth and Tenth Circuits and before the U.S. District Courts for the Southern and Eastern Districts of New York and for the Eastern Districts of Pennsylvania and Michigan, as well as the Tax Court of the United States. He is a member of the Association of the Bar of the City of New York.

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