



Setting THE record straight

Wednesday, April 6, 2011

Baseless claims are attempt to derail commonsense legal reform measure

The latest arguments offered by the Trial Lawyer's Bar against the proposed Fair Share Act (H.B. 1) – a compromise when it was passed in 2002 and 2006 and that contains the very same language today – are baseless claims designed to drum up support for amendments that will strip the measure of any meaningful reform.

Trial Bar's claim No. 1 – H.B. 1 will lead to many undercompensated or uncompensated victims, and this supposed burden will fall on Pennsylvania taxpayers

The Trial Bar has presented NO evidence to support this claim. More than 40 states have repealed or modified joint and several liability, and a handful of other states have never had a joint and several liability law on the books. Not one of these states has reported problems relative to compensation to victims or to a negative impact on their budgets (something that surely would have surfaced during the recent recession had this been a real concern). More importantly, not one of these states has taken action to return to joint and several liability.

Trial Bar's claim No. 2 – H.B. 1 will hurt small businesses

This desperate argument is a fabrication and the polar opposite of today's legal realities. Absent the reforms included in H.B. 1 (and S.B. 2), small businesses that lack the resources, in-house expertise and time for a protracted legal battle face the continued threat of finding themselves "the last man standing" and liable for 100 percent of damages regardless of their contribution to the injury or loss.

Trial Bar's claim No. 3 – Joint and Several liability has been an effective, long-standing legal rule

Joint and several liability's original intent to "make victims whole" has been grossly distorted by greed. As a result, unscrupulous trial lawyers search for defendants with "deep pockets," regardless of their level of responsibility. Often this is done to force an out-of-court settlement, knowing that the fear of being held fully responsible for a large financial judgment despite being only minimally at fault – if at fault at all – leaves defendants with no other option. A majority of states have modified or repealed this legal doctrine as a result.

Trial Bar's claim No. 4 – H.B. 1 needs to be amended

This bill is identical to what has passed the General Assembly twice before, and includes accommodations for a number of concerns. H.B. 1 does not break new ground; it merely brings Pennsylvania into the mainstream with regard to financial liability. It contains a number of exceptions: it provides that a defendant found 60 percent or more liable may still be held responsible for 100 percent of the damages; and it continues joint and several liability for environmental and intentional torts, and liquor law violations.

Trial Bar's claim No. 5 – Only "big business" supports H.B. 1

Pennsylvanians strongly support H.B. 1.

According to a recent survey of 800 registered Democratic and Republican voters conducted by Susquehanna Polling and Research, an overwhelming 82 percent of respondents recognize the inherent unfairness of the current system and support joint and several reform. Moreover, 76 percent support H.B. 1 *even if it means the plaintiff will never recover 100 percent of the damages they are seeking.*

It's worth noting that 60 percent of respondents also indicated they would be more likely to vote for a legislative candidate who supports lawsuit abuse reform.

Pennsylvanians understand what is at stake and support this commonsense reform measure. So too does the collective membership of the more than 50 business, health-care and local government groups that are unified in their support of H.B. 1 enactment without amendment.

Lesley Smith is communications director for the Pennsylvania Chamber of Business and Industry.

The Pennsylvania Chamber of Business and Industry is the state's largest broad-based business association, with its membership representing nearly 50 percent of the private workforce. The PA Chamber is The Statewide Voice of Business™. More information is available on the Chamber's website at www.pachamber.org

