

Pennsylvania's Fair Share Act: Reshaping Apportionment in Strict Liability Cases

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Given the relatively nascent state of Pennsylvania's Fair Share Act, there remains little precedential clarity on the extent of its effects. While the primary objective of the Fair Share Act was plainly the abolition of joint and several liability (subject to a few enumerated exceptions), the Act also makes several alterations to the allocation of liability among joint tortfeasors. One of those alterations has now been clarified.

In a recently published opinion in *Roverano v. John Crane, Inc.*, the Superior Court of Pennsylvania addressed how the Fair Share Act alters the traditional allocation of liability among strictly liable joint tortfeasors. Prior to the Fair Share Act, liability for strictly liable joint tortfeasors was apportioned on a per capita basis – that is, each defendant was allocated equal shares of liability regardless of the extent to which its conduct contributed to the injury. The *Roverano* Court rejected that antiquated approach.

In *Roverano*, the plaintiff alleged asbestos exposure from various products throughout the course of his employment that he contended caused lung cancer. The defendants brought a motion *in limine* seeking a ruling that their liability, if any, would be apportioned by the jury to the extent that each defendant caused the plaintiff's harm. The trial court denied the motion, positing that with no way to quantify the apportionment, the Fair Share Act could not apply.

The Superior Court disagreed, highlighting that the Fair Share Act explicitly applies to tort cases in which "recovery is allowed against more than one person, **including actions for strict liability**." It found that, by expressly making strict liability joint tortfeasors subject to the same allocation applicable to negligent joint tortfeasors, the Legislature made clear its intention to abolish the former per capita construct. Stated otherwise, the Fair Share Act intended to have a factfinder allocate liability based on causal responsibility in all types of cases, including strict liability matters.

In clarifying the applicability of the Fair Share Act to strict liability cases, the *Roverano* Court took a significant step in advancing the Act's goals. This represents a positive development for defendants and their insurers, as it moves Pennsylvania law further away from the artificial and inflated allocation of joint and several liability that plagued civil defendants for decades. It also serves as a harbinger of further like developments in tort cases involving multiple defendants, as Pennsylvania continues to gradually put the doctrine of joint and several liability in its legal archives.

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