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After Fair Share, trial lawyers ponder next move

Rothweiler to lead trade association as their legal field undergoes changes

by Jeff Blumenthal, Staff Writer

Trial lawyers suffered a major legislative defeat at the hands of business interests when Pennsylvania Gov. Tom Corbett signed legislation into law earlier this summer that will alter the mechanics of civil liability in negligence cases.

It is under this backdrop that Philadelphia's Kenneth M. Rothweiler last month became president of the Pennsylvania Association for Justice (PAJ, formerly the Pennsylvania Trial Lawyers Association), a 2,300-member trade association.

Rothweiler admits that trial lawyers are unsure how to move forward in light of the passage of the so-called Fair Share Act, which essentially eliminates the current doctrine of joint and several liability that has ruled Pennsylvania since the Colonial era. The new law provides joint liability only when a defendant is found at fault for not less than 60 percent of the total liability apportioned to all parties. Business interests supported the new law while trial lawyers opposed it.

Rothweiler, managing partner at 12-lawyer Rothweiler Winkler Eisenberg & Jeck, said the new law could affect the way some cases are tried.

"If you know one defendant can't pay, then you need another that is 60 percent negligent or you don't have much of a case for your client," he said. "It might mean that you need to show that one side is more culpable than the other."

PAJ is exploring a constitutional challenge to Fair Share. Some legal scholars say future plaintiffs could argue that it wrongly limits their ability to recover damages, resulting in a violation of their due process or equal protection rights.

"Why should a victim have to pay 50 percent of the damages when they did nothing to cause the injury and another culpable party is solvent?," Rothweiler said.

Business interests argue that Fair Share balances the system by eliminating the possibility that a defendant culpable for only 1 percent of damages could wind up paying 100 percent of the damages in a case.



Curt Hudson

Kenneth M. Rothweiler has been active in trade associations his entire legal career.

Rothweiler has been active in trade associations for much of his 30-year career, serving as president of the Philadelphia Trial Lawyers Association in 2001-02. His practice consists of medical malpractice, product liability and mass tort work.

He knows he will be fighting against more attempted tort reform measures as business interests try and capitalize on their momentum and a Republican legislature and governor.

Kevin Shivers, Pennsylvania director for the National Federation of Independent Business, said recently that repealing joint and several is only the start. He said his organization will seek, among other things, to limit non-economic damages in trials.

Another item on Rothweiler's agenda will be to improve the image of trial lawyers statewide. One of his trial lawyer peers, former Philadelphia Bar Association Chancellor Edward Chacker, said the most destructive hit on the reputation trial lawyers has been advertising.

"For any lawyer to get on television and tell people that if someone is injured they deserve money is false," Chacker said. "But those ads give credence to the false perception that there are loads of frivolous lawsuits. Then people actually get on juries and realize that these are seriously injured people. It's only frivolous until it happens to you."

Rothweiler agrees with Chacker but said there is little PAJ can do to curb such advertising. But Rothweiler does try and promote a different image of trial lawyers when he serves as a legal analyst for WTXF-TV Fox 29, where he has commented on the recent Casey Anthony trial and the fatal Duck Boat accident.

"I cringe at home when I see those ads where people say they'll get you cash," Rothweiler said. "And I'm tarred with that brush. Anytime money is mentioned it turns my stomach. But you have to realize that's a small percentage of trial lawyers and some of those people are not members of our organization. We need to try and change the perception of trial lawyers."