

June 15, 2011

RE: **Re: SB 2 versus SB 1131 – true versus hollow reform of Pennsylvania’s joint and several liability law**

Dear Senator:

After extensive debate and discussion among all parties, and after failed efforts on both sides to reach a compromise, you have before you two very distinct approaches to joint and several liability reform.

Both bills profess to repeal Pennsylvania’s joint and several liability law except in certain situations. In SB 2, the exceptions are where a defendant is 60% or more at fault, or is found liable because of intentional misrepresentation, an intentional tort, the release of hazardous substances, or drunk driving. These exceptions are consistent with those in many other states and mirror the reform the General Assembly has passed twice before. We believe they establish an appropriate balance in protecting plaintiffs and holding defendants accountable for their actions.

SB 1131 adds two exceptions to those in SB 2 – exceptions so broad that the bill offers nothing in the way of meaningful reform.

First, SB 1131 adds as an exception “a case where a minor has a beneficial interest” – so any case where a minor has a “beneficial interest” would still be controlled by joint liability. That doesn’t just mean cases where a minor is the injured party; it means any case where the injured party has a child (or a beloved nephew or grandchild) with a potential interest in the injured party’s reward. That’s going to mean most cases. No other state has this distinction, or one for minors generally.

Second, SB 1131 adds as an exception economic damages. That means all defendants will always be liable for all economic damages, no matter how small their percentage of fault. Again, no other state does this.

We recognize the variations and nuances among the states in joint and several liability reform, and there may be no single “perfect” balance. We believe the balance in SB 2 and HB 1 is a fair one for Pennsylvania. Others disagree – that’s to be expected. But please don’t be misled into thinking that SB 1131 is an alternative that still provides meaningful reform. Its added exceptions really do swallow the rule: It isn’t reform – it is the status quo.

Sincerely,

