

Joint and Several  
Liability – The Facts 03.08.2011

Safety and responsibility are the principles behind Pennsylvania's tenet of joint and several liability, the rule that comes into play when two or more people injure someone through negligence:

*Safety, because it holds all the wrongdoers accountable, and responsibility, because it prevents the cost of their negligence being shifted back onto the injured person or taxpayers.*

**What is joint and several liability?**

Joint and several liability is a two century old legal doctrine that has proven to encourage safety and responsibility. When two or more people injure someone through negligence, each of them must pay for the damages that he has caused. But if one of these wrongdoers can't pay the full amount, then the concept of joint and several liability provides a backup plan to ensure that the innocent victim is fully compensated.

**A lesson we learn growing up**

A bunch of kids are playing sandlot baseball and one of them hits the ball through a neighbor's window. Who's responsible? Not just the batter, or the pitcher, but everyone playing. As a lesson in responsibility, their parents make everyone chip in to repair the window. If one of them doesn't have money, then the others make up the difference. It would be unfair to make the neighbor pay for his own window. As adults, why would we act differently? That is how joint and several liability works.

**Protects taxpayers**

Joint and several liability protects taxpayers as well as victims. The costs of an injury will exist even if a victim is not fully compensated. If one or more of the defendants do not cover their cost of the injury, the burden falls on:

- (1) The healthcare provider who is still owed for medical bills,
- (2) The injured person and their family,
- (3) The taxpayers through state and federal programs such as Social Security or Medicaid/Medicare.

**To demonstrate the unfairness of eliminating joint and several liability,  
consider this hypothetical case:**

Hypothetical

You're a passenger in a car with Driver A who runs a red light. The driver of B coming from your right is going 50 mph in a 25 mph zone and can't stop in time. The car from your right crashes into you, seriously injuring you. The jury finds that both drivers are 50% responsible and that you'll need \$100,000 for medical care.

## **Current Law**

- Driver A has a \$15,000 insurance policy. Driver B has a \$100,000 policy. You collect \$15,000 from driver A and \$85,000 from driver B. That's how Pennsylvania law works today.

## **Proposed Law**

- Under proposed legislation, however, you can only collect \$50,000 from driver B because that driver is 50% liable. That plus the \$15,000 from Driver A leaves you with a total of \$65,000. \$35,000 for medical care will have to be paid by someone other than negligent drivers.

Some or all of this financial burden will be borne by the victim or taxpayers through Medicaid/Medicare. It can be argued that it is fair to the other driver, because he is 50% liable. But is it fair to you, the innocent victim, who did nothing wrong to be out \$35,000?

## **Conclusion**

Joint and several liability has worked as a legal concept in Pennsylvania for two centuries because when it comes to fairness, it is more fair for a victim to be fully compensated than a negligent party to receive a reduction in their share of damages as a result of a legal technicality.

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