

**Pennsylvania Superior Court Issues Pro-Plaintiff Advisory Opinion**  
**Regarding Fair Share Act**

The Pennsylvania Superior Court recently provided a potentially significant update regarding the Fair Share Act, which governs joint and several liability in Pennsylvania. In the matter of Spencer v. Johnson, 2021 Pa. Super. 48 (Pa. Super. March 18, 2021 Panella, P.J., McLaughlin, J., McCaffery, J.) (Op. by Panella, P.J.), a plaintiff-pedestrian alleged having sustained personal injuries as a result of being struck by a vehicle operated by an individual who was operating his wife's company car, while allegedly under the influence of alcohol.

In the Complaint, the plaintiff alleged respective theories of negligence against the defendant-driver and various negligent entrustment type claims against the defendant-driver's wife, as well as the wife's company which owned the car. At trial, the jury rendered a verdict in favor of the plaintiff in the amount of nearly \$13 million dollars, assessing comparative negligence, as follows:

Defendant-driver: 36%

Defendant-driver's wife: 19%

Defendant-driver's wife's Company: 45%

In applying the Fair Share Act to the jury's assessment of comparative negligence following appeal, the Superior Court held the defendant-driver's wife's company which owned the company car that the defendant-driver was operating, was jointly and severally liable for the entire award because the 19% liability of the wife should be added to the 45% of the company under a vicarious liability theory. This joint assessment of negligence put the company at a liability percentage over the 60% limit of the Fair Share Act required in order to hold an individual defendant jointly and severally liable for the entire verdict.

Namely, the appellate court accepted the plaintiff's argument the wife's negligence should be imputed to the company because the wife-employee was acting within the scope and course of her employment with the company at the time of the accident. As such, the Court accepted the plaintiff's argument that the Company should be held vicariously liable for the wife's alleged negligence. The Superior Court reversed and remanded the case to the trial court for further proceedings with regard to a molding of the verdict.

The Superior Court further noted that, assuming *arguendo* the Company was not vicariously liable for the action of the wife and those defendants were instead required to be treated separately, the Fair Share Act would not have applied because the Act only applies to cases in which the plaintiff's comparative negligence is an issue in the case. This portion of the Superior Court's opinion would appear to suggest that, where there is no finding of comparative negligence against the plaintiff, the Fair Share Act does not apply and the case reverts back to the old joint and several law under which a plaintiff could recover the verdict against any of the defendants, which are jointly and severally liable regardless of their respective percentage of liability assessed by the jury, (namely, a return to the pre-Fair Share Act jurisprudence where a defendant could be

made to pay the entire verdict, even if that defendant was found to be only 1% responsible). The defense has sought Supreme Court review of the Superior Court's ruling, so additional clarification may be forthcoming.

### **Analysis**

The latter portion of the Superior Court's opinion appears to be mere dicta and/or an advisory opinion by the Superior Court on the scope and reach of the Fair Share Act. Regardless, this opinion implies a potentially significant development as to how lower courts apply post-trial assessment of damages, as well as whether the Fair Share Act as it is currently understood in the Commonwealth, could be subject to change. Given it's anticipated the plaintiffs' bar will claim this holding as a significant victory moving forward, it will be important for the Supreme Court to lend further clarity on this frequently misunderstood aspect of trial damages. The attorneys at Lucas & Cavalier, LLC are here to answer any questions concerning this recent development and prospective application of the Fair Share Act.