

West Virginia Adopts Comparative Fault: HB 2002 Abolishes Joint and Several Liability Standard

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West Virginia Governor Earl Ray Tomblin (D) has signed HB 2002 into law, thus changing the state to one utilizing the modified comparative fault standard and no longer the joint and several liability standard for computation of allocation of fault. Sections 55-7-13 and 55-7-24 of the old West Virginia Code were repealed, and four new sections added 55-7-13(a)—(d). The law is effective 90 days from passage.

The bill, introduced in the Republican-controlled House on 1/5/15, was much-debated within the legal and business communities. The culmination of days of hearings, negotiations, amendments and conferences resulted in the final bill, as amended, being passed by the Senate on 2/24/15, and going to the Governor on 3/2/15.

The Key Provisions in the Law

The new code sections 55-7-13(a)—(d) provide:

- the allocation of damages applicable to each entity are to be in direct proportion to that entity's percentage of fault;
- liability for all compensatory damages shall be only several, and not joint;
- joint liability is applicable where conscious conspiracy between two or more defendants;
- method of computation of damages is set forth;
- nonparties are to be included in the consideration of allocation of fault for the harm;
- burden of proof for establishing comparative fault is on the party seeking to do so;
- provision for re-allocation of proportionate shares by trial court upon plaintiff's motion alleging a partially uncollectible verdict within one year after final judgment (lengthy process and rules for this process are specified);

- applicable to all actions arising or accruing on or after effective date (June 2015).

The Effect

This law represents a sea-change in the way West Virginia courts, juries and parties will approach claims for damages in actions “based on tort or any other legal theory seeking damages for personal injury, property damage, or wrongful death”.

For those of us involved in asbestos litigation, will bankruptcy trusts be considered non-parties? Given the Legislature’s recent passage of SB 411, Asbestos Bankruptcy Trust Claims Transparency Act and Silica Priorities Act, which was just signed by Governor Tomblin on 3/18/15, the legislative intent was to so include such non-parties for allocation of comparative fault.

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