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Joint and Several Liability Repealed New rules apply when assessing monetary damages

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On April 26, 2006, one of the most sweeping tort reform bills in Florida history went into effect. The legislature passed Chapter 2006-6 (HB 145) of the Florida Session laws, the repeal of Joint and Several Liability set forth in Florida Statute §768.81. This eliminated joint and several liability for economic damages for Florida defendants for all cases of actions accruing after the law went into effect. Under the old statutory scheme, joint and several liability meant that a party could be held liable for damages caused by someone else. Under new statute a defendant only pays for his or her share of the fault.

What effect will this change have on litigation? Its immediate effect is inconsequential, but its long-term repercussions will be far-reaching. Since the bill applies only to actions that accrue after the effective date, it does not affect any cases currently pending or in pre-suit. In the short term, it will likely lead to litigation as to when the plaintiff's cause of action accrued. Since a cause of action accrues as a matter of law when the last element of the cause occurs, plaintiffs will spend creative energy for the next several years finding ways to allege that the last element of their cause of action occurred before April 26, 2006. For actions that accrue after April 26, the change in liability is significant. For example, the last "occurrence" in a wrongful death action is the date of death. Therefore, for a wrongful death action after April 26, 2006, the elimination of joint and several liability applies. For other actions, the short-term effect of the change will most likely generate additional expenses due to an increase in Motions filed with the courts over when the cause of action accrued. However, in the long term, a defendant's exposure to economic damages could be significantly reduced.

Under the prior version of §768.81, a defendant found partially at fault by more than ten percent (10%) could be liable under a sliding scale for up to all of the plaintiffs' economic damages. This dollar amount of fault liability was in addition to any fault apportioned to the defendant under the verdict. This of course, resulted in plaintiffs suing what they perceived as "deep pockets" in the hope the jury would assign some liability to those defendants. As the following chart shows, the defendant could be held to pay extensive financial damages irregardless of their level of fault in the matter:

Jury's Determination of Fault	Defendants Maximum Liability At Fault in Part	Plaintiff Is Without Fault
10% or Less	None	None
25% or Less	\$200,000.00	\$500,000.00
50% or Less	\$500,000.00	\$1,000,000.00
Less than 100%	\$1,000,000.00	\$2,000,000.00

With the elimination of joint and several liability, a defendant is now only responsible for his or her fair share of the damages. This change should result in a significant reduction of the defendant's liability - a tremendous value to defendants with little or no fault. Hospitals and/or nursing homes (a "facility") are sued at times for care provided by doctors, physical therapists or other outside care providers. In many of those cases the plaintiff frequently looks to the facility for "deep pockets" to pay a judgment that they may not be able to collect from the responsible party.

To bring both laws into perspective, let's suppose a facility is sued along with the doctor and the physical therapist providing care to the patient. Further, the jury finds the plaintiff not at fault and awards economic damages totaling \$550,000. Liability is then assigned by the jury as follows: 11% to the facility, 29% to the doctor and 60% to the physical therapist. Under the old statute, if the doctor and therapist were not collectable, the facility could still wind up paying the entire damage award of \$550,000.00. Alternatively, under the new statute, the facility would only have to pay \$60,500.00 in damages. For most all situations where the jury finds less than 100% liability, this change produces similar effects. For another example, assume the jury renders a million dollar (\$1,000,000.00) plaintiff's verdict and finds a facility was thirty percent (30%) liable. Under the old statute it could pay the entire million-dollar verdict while under the new statute, it would only pay for its share of the liability or \$333,333.33.

A facility whose employees were not at fault, would generally have a lesser (or no) degree of exposure. Yet, under the old statute, they would frequently be named by a plaintiff, even if their fault was minimal, for a shot at a "deep pocket." Under the new statute, the scale shifts, their liability is less, and the bargaining position of a facility becomes stronger. Thus, the long-term effects of this legislation should not only reduce economic damage awards but will also influence negotiations to settle. This should result in reduced payments for those defendants whose potential liability exposure is not great.

Please feel free to contact any of the lawyers at QPWB for further detail or if you have any questions regarding this new statute and its implications.

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