

Joint and Several Liability: How 1% of Fault Can Mean Paying 100% of Verdict

by Douglas B. Marullo, Marullo and Krasner, LLC, www.cdl-law.com

Joint and several liability is the bane of trucking in Pennsylvania. It exposes a minimally liable trucker to being leveraged into overpaying claims involving a maximally liable four-wheeler that is minimally insured.

The principle is disturbingly simple. If a jury finds that more than one defendant is responsible for the plaintiff's injuries, the plaintiff can recover the entire verdict amount from any of the responsible defendants, regardless of their percentage of fault.

For example, a drunk driver hits a truck and severely injures his passenger. The jury finds the drunk driver to be 99% at fault, and the truck driver a token 1%. To send a message to the drunk driver, the jury awards \$1 million to the plaintiff. The drunk driver only has \$15,000 in coverage. The plaintiff is out of luck...right? Wrong.

Under Pennsylvania's existing "joint and several" law, the plaintiff can recover the entire \$1 million verdict from the truck.

Even worse, the jury will never know the repercussions of their actions.

The effect is to expose well insured trucking defendants far beyond the true proportion of their liability. The federally mandated insurance coverage makes our trucks prime targets for plaintiffs seeking a big payday.

This potential scenario empowers plaintiffs to leverage the potential overpayment in their pretrial dealings. The threat of being grossly and disproportionately over assessed at trial is a standard plaintiff tactic designed to garner overpayment from trucking defendants.

It's always the same threat, "Sure, maybe you don't owe that much, if the jury finds you 1% at fault..." or, "Maybe your driver didn't do anything wrong, but if I can convince the jury he was just 1% at fault..."

Do we have to give in? Not at all. We have faced such threats, taken the cases to trial, and been totally absolved by the jury.

You can read the decisions in the "cases" section of our webpage—www.cdl-law.com.

In one case, a 14-year-old passenger suffered a fractured ankle requiring a fusion when her mother struck our left-turning tractor trailer at night on a rural road. Our driver was found not negligent, precluding exposure for joint and several liability with the mother whose coverage limit was \$25,000.

In another, our left turning tractor trailer was struck by a drunk driver, killing the passenger. In this case, the jury found the driver and the passenger, who permitted him to drive his car, totally at fault with no liability on our driver.

Bottom line—joint and several liability is an important element in evaluating a case involving multiple defendants, particularly where the others have maximum liability and minimum coverage. Joint and several liability must be considered in the risk calculation, but does not mean automatic capitulation. 

