



2011: LEGAL YEAR IN REVIEW

By: Joseph P. Bradica

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The end of another year is fast approaching. In the midst of all the holiday commotion, most will devote time to reflecting on the successes and failures of the past 12 months, many will establish ambitious goals for the New Year, and some will develop a plan for how to get from where they are to where they want to be. Few will succeed.

Now, don't shoot the messenger. Experience tells us that plans fail. New information and changed circumstances wreak havoc on even the best plans. This fact does not stop the publication of thousands of books and articles related to business planning and strategy. The reason: the act of planning has inherent value. Former President Dwight D. Eisenhower once said, "I have always found that plans are useless, but planning is indispensable."

So, why is it that so many people fail to incorporate legal issues into their business and personal planning sessions? The simple fact remains that many ruinous legal results are avoidable. A few hours of planning could save a business, protect an inheritance, or prevent bankruptcy. In the legal field, what you don't know can hurt you.

With that in mind, allow me to provide you with some legal information you may have missed this year, which may help you set a new course in 2012. Hopefully, with some planning, legal troubles will not derail your journey to a successful new year.

United States Supreme Court

In CIGNA Corp. v. Amara, the Court expanded the potential liability that businesses face where a conflict exists between the language in a summary plan description (SPD) and the actual language of an ERISA Plan. The case involved CIGNA's conversion of a defined benefit pension plan based on a final average salary formula to a cash balance plan. Under the new plan, certain employees were eligible for fewer benefits than they would have received under the prior plan.

Nevertheless, CIGNA inaccurately surmised that the new plan generally provided "an overall improvement in retirement benefits" and that employees retiring in later years would receive benefits that were equal to or better than their prior benefits. CIGNA's failure to describe accurately the changes to the plan precipitated liability. It is noteworthy that the Court ordered revisions to the plan so that all beneficiaries received the promised "overall improvement" in benefits.

In Wal-Mart Stores, Inc. v. Dukes, the Court overturned class-action certification for a potential class of 1.5 million current and former female employees seeking relief against Wal-Mart for alleged gender discrimination regarding equal pay and promotion. The Court determined that the potential class did not meet the "commonality" standard required for class action status, because it was not possible for millions of employment decisions made at Wal-Mart stores around the country to share the same nucleus of facts and circumstances. The Court's ruling does not, however, prevent similar lawsuits at smaller companies, especially where evidence exists of a corporate culture of discrimination.



In Thompson v. North American Stainless, LP, the Court ruled that an employer violates Title VII of the Civil Rights Act if it takes action against an employee who is in the same "zone of interest" as another employee who files charges with the EEOC. In Thompson, the

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fiancée of an employee was fired after the company learned that the employee had filed an EEOC charge. The Court held that the employer had discriminated against the fired employee. The Court declined to identify a fixed class of relationships for which third-party reprisals are unlawful, however, stating that the anti-retaliation provision cannot be reduced to a comprehensive set of rules.

Pennsylvania Supreme Court

In Gillard v. AIG Insurance Company, the court held that the attorney-client privilege recognized by Pennsylvania law operates in a two-way fashion to protect confidential client-to-attorney or attorney-to-client communications made for the purpose of obtaining or providing professional legal advice. This long-overdue ruling is important for both Pennsylvania attorneys and their clients. As recently as 2007, Pennsylvania courts held that the privilege went one-way, protecting only confidential communications made by the client to his/her attorney.

In Whalen v. Commonwealth of Pennsylvania, the court ruled that ARD completion does not exempt DUI offenders from a mandate requiring them to install ignition interlock devices on their vehicles before regaining their driving privileges. Pennsylvania law requires certain DUI offenders, including those who have been convicted of intoxicated driving more than once within 10 years, to install ignition interlock devices on their vehicles before they can legally drive again. The court determined that, although completion of an ARD program does not technically constitute a conviction, acceptance into the ARD program amounts to acknowledgement of the offense and thereby subjects the offender to the terms of the interlock device provision.

Whether it is reviewing the details of a retirement benefits plan, revising corporate policies, defending against discrimination claims or guiding you through a holiday blunder, the lawyers at Roland Stock have the expertise and the experience to help make your new year brighter. Call one of our lawyers today and take a proactive approach to managing your legal needs.

THE “FAIR SHARE ACT” BECOMES LAW IN PENNSYLVANIA

By: Deborah A. Sottosanti

On June 28, 2011, Pennsylvania Governor Tom Corbett signed into law Senate Bill 1131, which reduced joint and several liability in Pennsylvania to a few limited exceptions. This new law, known as the “Fair Share Act,” signals a significant change to Pennsylvania law for both plaintiffs and defendants. The new law applies to cases that accrue on or after June 28, 2011. Thus, it does not apply to cases that have already been filed. With this change, Pennsylvania joins approximately 40 states that have abolished or modified their joint and several liability laws.

Prior to this change, under the old “joint and several liability” law, each defendant found liable in a case could be held responsible for the entire amount of damages awarded by a judge or jury regardless of the proportion of liability attributed to that defendant. Thus, if a plaintiff in a personal injury action brought suit against two defendants and both were found liable at trial, either one of them could be held responsible for the entire verdict, even if one of them was determined by the judge or jury to be minimally at fault.

The old law clearly favored plaintiffs who would stand a good chance of being compensated completely for their injuries even if one of the defendants was judgment proof. This was especially true if another defendant had “deep pockets.” However,

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For those looking to be proactive on the Pennsylvania legal front, the Pennsylvania Supreme Court recently announced that it will now provide opinions, rulings, and other information by way of "tweet." You can follow the court's activities at <http://twitter.com/SupremeCtofPA>.



**SPOTLIGHT ON:
JOSEPH B. BRADICA**



Meet Roland Stock attorney Joseph P. Bradica. Joe was licensed to practice law in 2002, and he has been an associate at Roland Stock since April 2010. Joe's practice focuses on civil litigation. Joe received his Bachelor of Arts Degree from the Pennsylvania State University in 1999, his MBA from Temple University Fox School of Business in 2002 and his Law Degree from Temple University Beasley School of Law in 2002. During law school, Joe was recognized for outstanding scholarship and distinguished performance in the trial advocacy program. He was also published in the Temple International Comparative Law Journal.

Joe is active in the Berks County Bar Association and contributes his time and talents to charitable endeavors such as the American Red Cross Legal Clinic, Habitat for Humanity and Philabundance. Joe resides in Sinking Spring, Pennsylvania with his wife, Jessie, and their three children, Adie, Lexi, and Andrew. Joe's interests include travel, sports and never-ending home improvement projects.

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the old law often produced results that were difficult to swallow for defendants who could, for example, be found 5% responsible for the injury or loss, but be required to pay 100% of the damages because the other defendant or defendants were judgment proof.

Under the new Fair Share Act, liability will now be "several," meaning that defendants found liable in a case will pay damages only in proportion to their portion of the fault as determined by a judge or jury. This rule applies where a defendant's liability for the damages or loss is less than 60% of the total liability of all defendants. Thus, a defendant who is found 5% negligent will only be liable for 5% of the verdict and a defendant who is found 50% negligent will be liable for 50% of the verdict. However, if a defendant is found more than 60% at fault for the plaintiff's injuries or losses, that defendant may be held liable for the full amount of damages awarded.

Another facet of the Fair Share Act allows the jury or judge in a non-jury case to consider, for purposes of apportioning liability only, the question of liability of any defendant or other person who has entered into a release with the plaintiff with respect to the action but who is not a party. This change allows defendants to identify and indicate the liability of nonparties who settled with the plaintiff prior to the lawsuit or parties who settled with the plaintiff prior to trial.

The new law contains limited exceptions in the following situations: (1) where a defendant is found liable for making an intentional misrepresentation; (2) where a defendant is found liable for an intentional tort; (3) where a defendant is held liable for 60% or more of the total liability apportioned to all parties; (4) where a defendant is found liable for a release or threatened release of a hazardous substance under the Hazardous Sites Cleanup Act; and (5) where a defendant is found liable under Section 497 of the Pennsylvania Liquor Code (Dram Shop Law). In these situations, the old joint and several liability law will apply.

How one views this significant change in Pennsylvania law is strictly a matter of perspective. Plaintiffs and their attorneys view this change as unfair to injured parties who may go largely uncompensated if the primarily responsible defendant is uninsured, underinsured or otherwise judgment proof. Those on the defense side, often businesses, corporate entities and health care professionals, are celebrating this new law. The Pennsylvania Chamber of Business and Industry stated the following about the enactment of the Fair Share Act: "This is monumental news for job creators, consumers, doctors, hospitals and local governments." The Chamber had worked with state lawmakers for more than 10 years to get this legislation passed.

If you have questions about how the Fair Share Act might affect you or your company, please ask one of our attorneys.



ROLAND STOCK NEWS

OUR CLIENTS DO GREAT THINGS!

Roland Stock client Elsayed "Steve" Elmarzouky received the Paul J. Hoh Volunteer Award for his contributions to the Berks County community. Congratulations, Steve!

A group of about 12 members and friends of Roland Stock client Albright College's student chapter of the Society for Human Resource Management took some time out from their busy academic schedules to stuff gift bags for the Police Athletic League Holiday Dinner. Thanks to all who participated for making the holiday season brighter for many local boys and girls!

COMMUNITY ACTIVITIES

Roland Stock recently donated 30 new blankets to the Combined Veterans Council of Berks County. Doug Graybill of the Combined Veterans Council of Berks County works with the Red Cross, the Greater Berks Food Bank and other social services groups to collect articles of clothing, food and blankets which are then distributed to the homeless veterans who live on the streets in Reading and throughout Berks County.

Roland Stock participated in the 2011 Annual Conference for the Circle of Life Coalition on Friday, November 4, 2011. Shareholder Robert R. Kreitz and Associate Victoria Gallen Schutt were in attendance. The purpose of the Circle of Life Coalition is to provide education, information and resources about all facets of end of life care.

Shareholder Robert R. Kreitz spoke on Estate Planning at The Highlands of Wyomissing on Wednesday, December 7, 2011. Robert will also be speaking at the National Business Institute Seminar "Probate Process From A To Z" on December 13, 2011 in Allentown and on March 6, 2012 in Reading.

Roland Stock attended the annual Berks County Bar Foundation's Holiday Benefit Luncheon on Friday, December 2, 2011. The luncheon benefited children's programs throughout Berks County. Shareholder Robert K. Kreitz and Associates Gregory A. Shantz and Joseph P. Bradica attended the luncheon, and Roland Stock hosted the Governor Mifflin Mock Trial Team, which attended the luncheon as well.

Shareholder John E. Muir was reappointed to serve as the Chairman of the Civil Litigation Section of the Berks County Bar Association for 2012.

Shareholder John W. Roland was recognized by Teen Challenge on December 2, 2011 for his many years of providing legal service to the organization.

A MESSAGE FROM THE EDITOR

By: S. Whitney Rahman



Holiday greetings from Roland Stock! As 2011 winds down, the attorneys and staff at Roland Stock would like to wish you and your family a joyous holiday season and a happy and prosperous new year!