



Will Hower

Craig R. Hersch *Florida Bar, Board Certified, Wills, Trusts & Estates Attorney; CPA*

JOINT & SEVERAL LIABILITY REPEAL

The Florida legislature got it right with its recent repeal of joint and several liability – part of its comprehensive tort reform package. The repeal of Florida’s joint and several liability law ensures people and businesses pay for the injury or loss they cause according to responsibility, rather than financial ability. Governor Bush signed the legislation into law a few weeks ago.

“We’ve built one of the most attractive business environments in the world, but to stay competitive we must continue eliminating impediments to our future success,” Bush said. “Predatory litigation limits job creation and increases consumer costs for hardworking Floridians.”

The new law ensures that while guilty parties pay for their mistakes, a culpable party who happens to have deep pockets won’t pay for co-defendants’ mistakes where the co-defendant does not have any assets or coverage.

Under joint and several liability a deep pocket defendant might pay for the whole liability even when that defendant may have only been found to have caused ten percent of the liability. This is best explained by an example: Assume that three parties, Mr. Smith, Mrs. Jones and Mr. Harris all collide in a terrible automobile accident causing the complete destruction of Ms. Bennett’s automobile. Further assume that Mr. Smith’s actions were found to be 80% of the cause of Ms. Bennett’s destruction, but that Mrs. Jones and Mr. Harris were found to have contributed to her damages only 10%.

Then lets say that neither Mr. Smith or Mrs. Jones have any insurance or any money to pay Ms. Bennett’s damages. Under joint and several liability law, Mr. Harris, the deep pocket, pays 100% of the damages even though he is only 10% liable. Under the joint and several liability law change, Mr. Harris only pays the part of the damage he caused.

This is a good first step towards tort reform. “I am proud that we were able to re-establish that fairness in Florida’s civil justice system by demanding that people are held responsible for exactly what a jury determines is their responsibility — no more and no less,” Governor Bush said.

©2006 Craig R. Hersch. You may contact Craig at hersch@sbslaw.com