IN THE

Supreme Court of Pennsylvania

EASTERN DISTRICT

No. 26 EAP 2018

WILLIAM C. ROVERANO and JACQUELINE ROVERANO, h/w,

Appellants,

– v. –

JOHN CRANE, INC. and BRAND INSULATIONS, INC.,

Appellees.

No. 27 EAP 2018

WILLIAM ROVERANO,

Appellant,

– v. –

JOHN CRANE, INC.,

Appellee.

On Petition for Review from the Order dated December 28, 2017 in the Superior Court of Pennsylvania, at No. 2837 EDA 2016, affirming the Order dated July 27, 2016 in the Court of Common Pleas of Philadelphia County, at No. 1123, March Term, 2014, Victor J. DiNubile, Jr., Judge

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QUESTIONS PRESENTED

1. Whether, under this issue of first impression, the Superior Court misinterpreted the Fair Share Act 42 Pa.C.S. Sec. 7102 in holding that the Act requires the jury to apportion liability on a percentage basis as opposed to a per capita basis in this strict liability asbestos case?
2. Whether, under this issue of first impression, the Superior Court misinterpreted the Fair Share Act in holding that the Act requires the jury to consider evidence of any settlements by the plaintiffs with bankrupt entities in connection with the apportionment of liability amongst joint tortfeasors?

COUNTER STATEMENT OF THE CASE

Except where noted, Appellants have provided the Court an accurate recounting of the record below. John Crane, Inc. ("JCI") includes the following factual and procedural matters to provide a more complete record.

A. Form of Action and Procedural History

Prior to trial, Appellants filed bankruptcy trust claim applications with the following 13 asbestos bankruptcy trusts, several of which (italicized below) have entered into settlements and releases with Appellants: 1) AC&S Asbestos Settlement Trust; 2) *Armstrong World Industries, Inc. Asbestos Personal Injury Trust Settlement*; 3) *The Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust*; 4) *Celotex Asbestos Settlement Trust*; 5) Combustion Engineering Asbestos Trust; 6) G-I Holdings, Inc. Asbestos Personal Injury Trust; 7) DII

Industries, LLC Asbestos Personal Injury Trust (Halliburton); 8) H.K. Porter Asbestos Trust; 9) *Manville Personal Injury Settlement Trust*; 10) *The Owens Corning/Fibreboard Asbestos Personal Injury Trust*; 11) Porter Hayden Company Asbestos Trust; 12) *USG Asbestos Personal Injury Trust*; and 13) W.R. Grace Asbestos Personal Injury Trust. (*See* R. 1090a, 1179-80a.)

After trial, and after the trial judge granted Appellants' motion to prevent bankrupt entities from being included on the verdict sheet, the jury delivered a 7-1 verdict in favor of Appellants, and against both JCI and Brand Insulation Inc. ("Brand"). (R. 714a-715a, Tr. 145-46; R. 1057a-1060a.) The jury also found liable six other non-bankrupt defendants that had made or supplied asbestos-containing products and that had previously reached settlements with Appellants. (R. 1057a-1060a.)

B. Appellants' Case in Chief

1. Testimony of William Roverano

Mr. Roverano, who brought the lower court action as a result of contracting lung cancer, was the only witness that testified at trial regarding his asbestos exposure. Mr. Roverano testified that, between the years of 1971 and 1981, he worked with and in the vicinity of various asbestos containing products. (R. 430a-431a, Tr. 69-70.)

2. Job History

Mr. Roverano began working at PECO Energy Company ("PECO") in 1971 as a helper, staying in that role for three years before obtaining the title of carpenter. (R. 429a, Tr. 64.) After he obtained the role of carpenter, Mr. Roverano would occasionally work weekends in the role of a helper. (R. 429a-430a, Tr. 65-66.) During cross-examination, Mr. Roverano admitted that, from 1974 on, he worked as a carpenter and the only asbestos-containing product he worked with was Micarta board (not a JCI product). (R. 455a, Tr. 8.) However, Mr. Roverano testified that during his career as a carpenter (from 1974 on), he may have been exposed to other asbestos-containing products during periods where he worked overtime as a helper. (R. 454a-455a, Tr. 7-8.) Mr. Roverano did not testify to the frequency of his overtime work.

3. Mr. Roverano's History of Smoking

As part of his testimony, Mr. Roverano admitted that he smoked anywhere from one to one-and-a-half packs of cigarettes per day for approximately thirty years, beginning in 1967 through 1997, when he quit smoking. (R. 442a, Tr. 114-15.) Mr. Roverano also admitted to being exposed to second-hand smoke from his father and wife, as well as his coworkers at PECO. (R. 493a-494a, Tr. 46-47.) Mr. Roverano later confirmed that no doctor had ever told him he exhibited any asbestos-related pleural plaques. (R. 490a-491a, Tr. 43-44.) He further confirmed

that no doctor had ever told him that he had asbestos related pleural thickening. *Id*. Finally, Mr. Roverano confirmed that no doctor had ever told him that he had asbestosis. (R. 491a, Tr. 44.)

4. Mr. Roverano's Frequency of Direct Exposure to JCI Products

As a helper, Mr. Roverano testified that he would install JCI rope and graphite packing by cutting it and installing it on boiler doors and valves. (R. 433a, Tr. 80-81.) On cross-examination, however, he admitted that the graphite packing to which he was exposed while working at PECO had actually been supplied by Garlock. (R. 487a, Tr. 40.) On redirect, Mr. Roverano testified that ***both*** JCI and Garlock supplied graphite packing and that JCI provided more packing than Garlock. (R. 514a, Tr. 67.)

Mr. Roverano testified that he breathed dust from JCI products after personally cutting, installing, or removing these products as part of his work at PECO, or being in the vicinity of others who cut, installed, or removed these products. (R. 431a-436a, Tr. 72-91.) Mr. Roverano testified that he was exposed "numerous times" to JCI packing materials that he personally cut and installed or that others in his vicinity cut and installed, but he did not provide any further details regarding the frequency or regularity with which he was exposed to JCI's packing materials. (R. 432a, Tr. 74-75; R. 436a, Tr. 90-91.) On cross-examination, Mr. Roverano admitted that "numerous times" meant an estimate of

only five to ten instances of working with JCI products. (R. 483a-484a, Tr. 36-37.) With the following line of questioning on redirect, Mr. Roverano attempted to clarify the frequency of his exposure to JCI products.

> Q. So, Mr. Roverano, when Mr. Adams asked you on cross-examination and read to you that you testified that you only work with John Crane rope packing five to ten times, do you remember this testimony: Can you give us an idea of how often during this ten year period you worked with John Crane rope packing? Several. What do you mean by several? Ten to 15. Do you remember that?
>
> A. Yes.
>
> Q. First of all, it wasn't five to ten. Next, down near the bottom: "Can you give us an idea of how often during this ten year period were you present when boilermakers removed rope packing? "ANSWER: Numerous times." Do you remember giving that?
>
> A. Yes.

(R. 513a-514a, Tr. 66-67.)

5. Proximity of Mr. Roverano's Exposure to JCI's Products

Mr. Roverano testified on direct examination that he would have been within one to two feet of boilermakers when they cut the rope packing to install it.

> Q. Can you give us an idea how many times or how often you personally cut and installed John Crane rope packing?
>
> A. Numerous times.
>
> Q. Were you ever working with or assisting a trade when they were cutting or installing the John Crane asbestos rope packing?
>
> A. Yes.

Q. And what trade would that have been?

A. Most of the boilermakers.

Q. And what were the boilermakers doing with it?

A. Same thing.

Q. Meaning what?

A. Installing it and pulling it out.

***

Q. And where would you be in relation to them when they were doing it?

A. Close by, one to two feet.

(R. 431a-432a, Tr. 73-75.)

On cross-examination, however, Mr. Roverano admitted that during his deposition he testified that he was five feet away from these workers. (R. 484a-485a, Tr. 37-38.) This is the only testimony that Mr. Roverano offered regarding proximity to JCI products, whether he personally installed them, or worked in the vicinity of others who installed the products.

6. Regularity of Mr. Roverano's Exposure to Other Asbestos Products

Mr. Roverano testified he was more regularly exposed to asbestos dust from products other than JCI's. For example, dust from workers installing insulation at the PECO power plant would fall on Mr. Roverano from above on a daily basis.

(R. 475a-476a, Tr. 28-29.) Mr. Roverano also admitted that on a regular and frequent basis he breathed asbestos dust emitted from Delaval pumps and Garlock gaskets when he would personally remove and install the Delaval pumps. (R. 458a-460a, Tr. 11-13.) He also admitted that on a regular and frequent basis he breathed asbestos dust from Ingersoll Rand gaskets when he would personally remove and install Ingersoll Rand condensers. (R. 460a-462a, Tr. 13-15.) Additionally, Mr. Roverano admitted that on quite a few occasions he breathed asbestos dust emitted after he removed asbestos-containing blankets that covered Westinghouse and General Electric turbines. (R.463a-465a, Tr. 16-18.) Westinghouse and General Electric turbines used gaskets that emitted asbestos dust that Mr. Roverano breathed during removal. (R. 465a, Tr. 18.) Westinghouse also manufactured the Micarta board that Mr. Roverano testified emitted asbestos dust when he or others manipulated it. (R. 466a-468a, Tr. 19-21.) Mr. Roverano testified that he regularly and frequently breathed the asbestos dust emitted from Micarta board. (R. 467a-468a, Tr. 20-21.) Mr. Roverano also admitted that he worked in the vicinity of J.J. White workers who installed asbestos-containing insulation products, and that Mr. Roverano breathed the dust emitted by these insulation products. (R. 469a-470a, Tr. 22-23.) Mr. Roverano also breathed asbestos dust created when he would use a pneumatic chipping hammer to remove W.R. Grace insulating cement. (R. 479a, Tr. 32.) Finally, Mr. Roverano admitted

that during a home remodeling project between 1975 and 1976 he breathed asbestos dust emitted from Georgia Pacific Ready Mix Joint Compound and asbestos-containing insulation in his own home. (R. 471a-472a, Tr. 24-25.)

7. Testimony of Dr. Steven Compton

Appellants also offered the expert testimony of a microscopist, Dr. Steven Compton, who opined, again over JCI's objection, that Mr. Roverano had been exposed to airborne asbestos emitted from JCI's packing products. (R. 799a-800a, Tr. 49-50.) Dr. Compton based his opinion on tests that he did not perform, and JCI objected to his opinion with regard to Mr. Roverano's exposure to asbestos emitted by JCI products on hearsay grounds. (R. 802a-803a, Tr. 61-62.) Under cross-examination, Dr. Compton admitted that Mr. Roverano did not work with JCI packing materials on a day to day basis, and that Mr. Roverano did not work with JCI products at all during his time working with riggers, insulators, electricians, and during his time working at the turbine group at PECO. (R. 816a, Tr. 114)

C. John Crane's Expert Testimony

1. Dr. James Crapo

JCI offered the expert testimony of Dr. James D. Crapo, a board certified internist specializing in pulmonary disease, who testified that, "[s]moking was [Mr. Roverano's] risk factor that caused his cancer." (R. 967a, Tr. 98.) Dr. Crapo also

expressed the opinion that the cause of Mr. Roverano's lung cancer was his smoking and not his exposure to asbestos. (R. 957a-958a, Tr. 60-62; 962a-967a, Tr. 80-100.) Dr. Crapo testified that "to say is there a risk of lung cancer, you need exposure, and you need development of asbestosis beyond exposure, and you really need a smoking history to create the foundation for the development of the cancers." (R. 958a, Tr. 61.) Dr. Crapo further testified, after discussing numerous epidemiological studies, that "when you do the epidemiology, it strongly suggests that there is a linkage between the development of asbestosis and increased risk of lung cancer." (R. 962a, Tr. 79.) Dr. Crapo testified Mr. Roverano had no evidence of asbestosis, pleural plaques, pleural thickening or any objective signs of asbestos exposure. (R. 965a, Tr. 92.) Dr. Crapo explained that one would not expect to develop asbestos-related lung cancer in the upper lobes (the location of one of Mr. Roverano's two tumors) in the absence of asbestosis. (R. 959a-960a, Tr. 66-70.)

Dr. Crapo also explained how some types of asbestos fibers are more hazardous than others. Specifically, Dr. Crapo explained that chrysotile asbestos fibers—the type of fibers that are contained in JCI products—are the least dangerous fiber, and can be completely removed from the lungs by the body's own mechanisms in a matter of months after it is ingested. (R. 973a, Tr. 122-23.) In fact, Dr. Crapo testified that it would require sustained and constant exposure to high levels of chrysotile asbestos fibers to contract an asbestos-related disease from

that exposure. *Id*. Amphibole asbestos fibers, on the other hand, remain in the lungs for many years after ingestion, and are much more likely to cause asbestos-related disease. (R. 974a, Tr. 128.) Dr. Crapo explained that high levels amphibole fibers are commonly present in many different forms of thermal insulation. (R. 963a, Tr. 82-83.)

In the appeal, Appellants misstate the testimony of Dr. James Crapo in a material and misleading manner. Appellants have asserted that Dr. Crapo "acknowledged that if an individual had substantial and significant exposure ***to a variety of asbestos products*** and developed an asbestos disease, then one could not separate out which product caused the disease and which one did not." (Appellants' Br. at 13 (emphasis supplied).) The record demonstrates, however, that Dr. Crapo was specifically asked, "If one of your patients was exposed to a variety of different, ***let's just say thermal insulation products***, equally, would you be able to say which thermal insulation product caused the disease and which did not?" (R 975a, Tr. 132, emphasis supplied.) Dr. Crapo, having previously testified that thermal insulation products contain higher concentrations of amphibole asbestos, responded by stating that "[i]f they are all part of something he used

substantially and contributed to the dose in a major way, then, no, I couldn't separate them out." (*Id.*)[1]

Dr. Crapo also provided product-specific testimony concerning the potential for inhaling chrysotile asbestos contained in JCI's packing materials compared to the risk of inhaling amphibole asbestos contained in various thermal insulation products, explaining that the "release of fibers from [packing] would be actually very low…." (R. 962a, Tr. 80.) Moreover, Dr. Crapo explained that whatever fibers would have been released from JCI's packing materials would have been chrysotile asbestos and that they only would have "been released under certain operations when they were scraping or grinding off the packing from a packing change." (*Id.*) Dr. Crapo concluded that exposure to only chrysotile asbestos from John Crane packing material would have been "such an incredibly low dose exposure, that it would carry no risk of disease." (R. 963a, Tr. 81.)

2. Dr. Frederick Toca

JCI also called Dr. Frederick Toca, a certified industrial hygienist and toxicologist with a PhD in industrial hygiene from the University of Iowa. (R.

[1] Amici, the Pennsylvania Association for Justice and the American Association of Justice, have made the same materially misleading citation to the record, citing the same passage of Dr. Crapo's deposition to support their assertion that Dr. Crapo "testified that for an individual with substantial, lengthy exposure to various asbestos products, there was no way to determine which product caused lung cancer and which did not, or to assess relative degrees of responsibility." (Amici Br. at 5.) This assertion supports Amici's later misleading claims that "[i]n this case, the experts agreed that the evidence did not permit individualized determination of each defendant's relative contribution to Mr. Roverano's lung cancer" and "[w]hat the experts say cannot be done, the jurors should not be required to do." (*Id.* at 6.)

613a, Tr. 31-33.) Dr. Toca explained that the JCI packing products Mr. Roverano described did not emit nearly as many respirable fibers as the insulation and other asbestos-containing products to which Mr. Roverano had been exposed. *See, e.g.*, (R. 622a-623a, Tr. 69-72.) In fact, Dr. Toca testified that "the exposure from work with John Crane packing would have been below the no effect level and therefore would not have caused him increased risk of disease." (R. 624a, Tr. 76.) Dr. Toca explained that the "no effect" level describes an asbestos level resulting in no effect on the animal population tested. (R. 629a-630a, Tr. 97-98.) Dr. Toca also testified that JCI packing did not release asbestos fibers above background levels. (R. 630a, Tr. 100.) Dr. Toca explained that JCI packing products released between .005 and .01 f/cc (a level comparable or lower than levels of asbestos found in ambient air). (R. 621a, Tr. 63-64.) In comparison, the insulation products to which Mr. Roverano had been exposed emitted as much as 30 to 100 f/cc. (R. 622a, Tr. 59.)

D. Brand's Expert Testimony

Brand offered the expert testimony of Dr. Patrick Rafferty, an industrial hygienist. Dr. Rafferty admitted that Mr. Roverano's exposure to asbestos emitted by rope packing products manufactured by JCI would have been "very low" compared to his exposure to insulation products manufactured by several of the other defendants in the case. (R. 670a, Tr. 111-12.) Dr. Rafferty also testified that

removing or installing encapsulated asbestos products like gaskets emits over a hundred times fewer asbestos fibers than installing and removing insulation products. (R. 671a, Tr. 115.)

SUMMARY OF THE ARGUMENT

This Court should affirm the Superior Court's opinion holding that the Fair Share Act (the "Act") requires a jury to apportion liability among strictly liable defendants and "other persons" on a percentage of comparative liability basis. The plain language of the Act mandates that *all* strict liability cases—even those involving asbestos-related injuries—are subject to the comparative apportionment regime set forth in Section 7102(a.1)(1). Appellants provide no textual argument to the contrary in construing the Act. Instead, Appellants argue that pre-Act case law requiring that apportionment be made on a *per capita* basis in strict liability cases is still good law, because the Act does not explicitly state that it was intended to supersede these cases. Appellants' argument finds no support in the decisions upon which it relies. Those cases stand for the unremarkable proposition that the General Assembly's intent to change existing law can be found by reviewing the statute's title and its text. Here, both the title and the text of the Fair Share Act indicate that a change in the law of apportionment in strict liability cases was intended and effectuated. Because this Court is required to give deference to the General Assembly's intent as embodied in the text of the Act, regardless of this

Court's perception of its wisdom, it should affirm the Superior Court's interpretation and enforce the Act as written.

Similarly, the Superior Court correctly held that the Act allows the jury to apportion liability to bankrupt entities that have settled with a plaintiff so long as the evidence supports a finding of liability against those entities. The broad language of the Act encompasses all "persons" regardless of their solvency, and makes no exception for a bankrupt entity. Appellants concede that no exception exists for bankrupt entities under the Act, but erroneously argue that the lack of an exception is the same as silence on this issue. The Act, however, is *not* silent but instead states that all "persons" may be assigned a percentage of liability solely for purposes of apportionment, and not for purposes of entering a judgment against them or for pursuing a claim for contribution. By adding the mandate that an apportionment of liability to the bankruptcy trusts may not be used for any other purpose, the General Assembly purposefully crafted the Act to address and supersede prior case law that held bankruptcy trusts could not be assigned liability without running afoul of federal bankruptcy law. Accordingly, there is no reason to resort back to pre-Act case law to interpret the statute's meaning or its effect as it relates to bankruptcy trusts. The Superior Court's opinion should be affirmed in all respects, and the case must be remanded for a new trial on apportionment.

ARGUMENT

I. THE FAIR SHARE ACT REQUIRES THE APPORTIONMENT OF DAMAGES BASED UPON A COMPARATIVE PERCENTAGE OF LIABILITY

The Superior Court correctly concluded that the Fair Share Act requires comparative apportionment of liability on a percentage basis in cases sounding in strict liability. In reaching this conclusion, the Superior Court relied on Pennsylvania's Statutory Construction Act, 1 Pa.C.S. § 1921 *et seq*, and other principles of statutory construction consistent with Pennsylvania law. *See, e.g., Commonwealth v. Anderson*, 169 A.3d 1092, 1096 (Pa. Super. Ct. 2017) ("Every statute shall be construed, if possible, to give effect to all its provisions") *citing Commonwealth v. Stotelmyer*, 110 A.3d 150 (Pa. 2015); Super Ct. Op., Appellant's App. A, at 31. As the Superior Court explained, "a court generally is obligated to effectuate, absent constitutional infirmity" the Legislature's expression of policy. *Tincher v. Omega Flex*, 104 A.3d 328, 399-400 (Pa. 2014) (explaining that the legislature's expression of policy, whose judgment and intent may be wise or unwise, must be effectuated by this Court absent Constitutional incongruity).

A. The Superior Court Correctly Construed The Fair Share Act's Apportionment Provision

As the Superior Court stated, the "principal question in this case is whether, and to what extent [the Fair Share Act's Section 7102(a.1)(1)] changed the way to allocate liability among strictly liable joint tortfeasors." (Super. Ct. Op., Appellant's App. A, at 23.) The parties agree that, under the Act, "liability" must

be apportioned between strictly liable defendants and other "persons" who are found liable by the jury. The parties disagree as to *how* that apportionment must be done. The Superior Court agreed with JCI that the Act requires a percentage-based comparative apportionment regime be applied to strictly liable defendants, rather than the *per capita* regime that the trial court applied and that Appellants advance on appeal. (*See id.* at 32 ("…liability in strict liability cases must be allocated in the same way as in other torts cases, and not on a per capita basis, and [] the trial court erred in holding that the jury could not apportion liability pursuant to the Fair Share Act.").) The Superior Court's reasoning and ruling should be affirmed.

A review of the text of Section 7102 before it was amended by the Fair Share Act in 2011 reveals why comparative apportionment of liability on a percentage basis is required in this case. The original version of Section 7102—then known simply as the Comparative Negligence Act—contained an apportionment provision that stated as follows:

> Where recovery is allowed against more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the ***amount of causal negligence*** attributed to all defendants against whom recovery is allowed.

42 Pa.C.S. § 7102(b) (emphasis supplied) (deleted 2011). In the years between its passage and the adoption of the Fair Share Act, this Court interpreted this language to require that a jury must, when the facts allow it, apportion the comparative

degrees of negligence among the defendants on a percentage basis. *See Ball v. Johns-Manville Corp.*, 625 A.2d 650, 657-58 (Pa. 1993) ("[I]t is clear that the Comparative Negligence Act requires apportionment of liability among defendants based on their relative degree of causal fault."); *Ottavio v. Fibreboard Corp.*, 617 A.2d 1296, 1300 (Pa. 1992) ("In Pennsylvania, the Comparative Negligence Act, 42 Pa.C.S. § 7102, directs that each tortfeasor shall be liable for a portion of the total damages, to be determined by the ratio between the amount of each party defendant's causal fault and the total fault attributed to party defendants against whom the plaintiff is entitled to recover. Apportionment of liability among all defendants is designed to allow responsible defendants to contribute to the award in proportion to their degree of negligence.") (citing *Embrey v. Borough of West Mifflin*, 390 A.2d 765, 774 (Pa. Super. Ct. 1978)); *see also Sirianni v. Nugent Bros., Inc.*, 506 A.2d 868, 869 (Pa. 1986) (recognizing jointly negligent tortfeasors could be held liable by a jury in proportion to their comparative fault pursuant to the comparative fault statute, and affirming order confirming a four way apportionment consisting of 50%, 25%, 25% and 0%).

Prior to passage of the Fair Share Act, this Court held that the percentage-based apportionment provision then embodied within Section 7102(b) did ***not*** apply to defendants found liable solely under a strict liability theory, because the theory does not contain an element of fault. *See Walton v. Avco Corp.*, 610 A.2d

454, 462 (Pa. 1992) ("[T]he Superior Court's introduction of 'comparative fault' in allocating the damage award between strictly liable defendants was erroneous.); *Baker v. AC&S*, 755 A.2d 664, 669 (Pa. 2000) ("In a strict liability action, apportionment based upon fault is impermissible as this tort theory does not contain an element of fault. This is in contrast to negligence actions where liability is allocated among joint tortfeasors according to percentages of comparative fault. 42 Pa. C.S § 7102."). Instead, this Court held that apportionment in strict liability cases must be done on a *per capita* basis. *See id. at 669; Walton*, 610 A.2d at 462.

When the General Assembly passed the Fair Share Act in 2011, however, it deleted Section 7102(b) and replaced it with Section 7102 (a.1)(1), which added the phrase "including actions for strict liability" *directly to the apportionment provision of the Act*. It did this knowing very well that Section 7102(b) had already been construed by this Court as requiring a comparative allocation of fault. The General Assembly also replaced the phrase "causal negligence" with the word "liability," thereby demonstrating the General Assembly's intent that, *even in strict liability cases*, "each defendant…[is] liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of that defendant's *liability* to the amount of *liability* attributed to all defendants and other persons to whom *liability* is apportioned under subsection (a.2)." *See* Section 7102 (a.1)(1) (emphasis added). Given this deliberate change in the apportionment provision of

the Act, the only reasonable interpretation of the statute is that which the Superior Court articulated.

The General Assembly's placement of the "including actions for strict liability" clause within Section 7102(a.1)(1) is controlling of the issue before this Court. If, as Appellants suggest, the General Assembly intended to make clear that the Act's abrogation of joint and several liability applied only to strict liability actions, it would have added that clause to Section 7102(a.1)(2), which abrogates joint and several liability. (Super. Ct. Op., Appellant's App. A, at 26-27.) Instead, the General Assembly added that clause to Section 7102(a.1)(1), which deals *specifically* and *solely* with allocation of liability among joint tortfeasors. By doing so, the General Assembly changed the allocation rule articulated in *Walton* and *Baker* prior to the Fair Share Act's enactment to make comparative apportionment the rule in all cases. As the Superior Court reasoned, "[i]f the Legislature did not intend to change those rules, there would be no reason to add the 'including actions for strict liability clause' to Section 7102(a.1)(1)." (*Id.* at 27.)

Thus, the *per capita* apportionment regime once mandated by *Walton* and *Baker* for strict liability cases has been written out of Pennsylvania law by the General Assembly, and superseded by Section 7102(a.1)(1) of the Act. *See, e.g.*, *Dorsey v. Redman*, 96 A.3d 332, 342 (Pa. 2014) (recognizing legislature

superseded common law and prior Supreme Court authority by passage of Pennsylvania's Tort Claim Act in 1980). Because the plain language of the Fair Share Act is clear, it must control the outcome of this case. *See* 1 Pa. Cons. Stat. Ann. § 1921(b) ("When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.").

B. Apportionment On A *Per Capita* Basis Finds No Support In The Act Or The Rules Governing Statutory Construction

Appellants do not articulate a textual reason for their argument that a *per capita* apportionment is required by the Act. Instead, Appellants argue that *Walton's* mandate that liability be apportioned equally on a *per capita* basis in strict liability cases is still the law of Pennsylvania, because the Act does not expressly state within its title or text that it was intended to supersede *Walton*.[2] (Appellants' Br. at 20.) Appellants' argument fails for any one or more of at least three reasons.

First, Appellants' authorities do not hold that a statute must expressly state that it is overruling existing judicial precedent before it can be given that effect. For example, Appellants cite *In re Erie Golf Course*, 992 A.2d 75, 81 (Pa. 2010)

[2] Amici, the Pennsylvania Association for Justice and the American Association of Justice, have argued "Section 7102(a.1) provides for apportionment of liability among defendants found liable proportional to the amount of each defendant's liability. This provision does not direct a specific method of apportionment—pro rata or per capita." (Amici Br. at 5.) However, in support of this argument, Amici have not cited *Walton*, or, indeed, any case law whatsoever and, as a result, their arguments should not be given any weight.

for the proposition that "…statutes are not intended to overturn well-established precedent without an express declaration of such purpose…." *Id*. The ellipses surrounding this quote in Appellants' brief are misleading, because, upon fair examination of the full context of this statement in *Erie*, it is apparent that this statement is not the Court's pronouncement of the law but rather a recitation of one of the parties' arguments in support of its position. *Compare* Appellants' Br. at 20 *with Erie*, 992 A.2d at 81-82. Indeed, the proposition that "statutes are not intended to overturn well-established precedent without an express declaration of such purpose" played no role in this Court's holding in *Erie*.

Appellants' citation to *The Birth Center v. The St. Paul Cos.*, 787 A.2d 376, 387 (Pa. 2001) for the proposition that "statutes are never presumed to make any innovation in the rules and principles of the common law or prior existing law beyond what is expressly declared in their provisions" is equally unavailing. (Appellants' Br. at 20.) In *The Birth Center*, this Court considered whether a statute that provided for attorney's fees, punitive damages, and interest arising from an insurance company's bad faith necessarily precluded recovery of compensatory damages because, as the insurance company argued, compensatory damages were not mentioned in the statute. *Id*. at 389. This Court held that compensatory damages were recoverable and that the statute's silence as to their availability could not be read to prohibit their recovery altogether under the

common law. *Id.* "To hold otherwise . . . would read a statute - - that authorizes additional damages - - to prohibit the award of compensatory damages, which were already within the power of the courts to award." *Id*. Here, as explained above, the Fair Share Act is *not silent* as to whether damages should be apportioned to strictly liable defendants in accord with their comparative percentage of liability.

Both *The Birth Center* and *In re Erie* rely upon *Rahn v. Hess*, 106 A.2d 461 (Pa. 1954). But *Rahn* concerned a situation where "[n]either the title nor the body of the Act in question reveals any intention by the Legislature to change the substantive law...." *Id*. The opposite is true in regards to the Fair Share Act, because it includes the phrase "strict liability" explicitly within the body of Section 7102(a.1)(1) which, in turn, explains *how* liability is to be allocated proportionately in *all* cases. Moreover, it is difficult to imagine that a law titled the "*Fair* Share Act" had a purpose *other than* achieving the comparative allocation of liability among severally liable defendants. Indeed, the Superior Court recognized that the General Assembly's intent to change the law of apportionment in strict liability cases had been explained by the floor manager, when he stated that when "you have strict liability claims…you would apportion the damages between strict liability defendant number one and strict liability defendant number two. Let us assume they are 70-30 and you would go after strict liability one for the 70 and you would go after strict liability two for the 30 to the degree that the jury or the judge

found them causally responsible." (Super. Ct. Op., Appellant's App. A, at 29-30 (quoting 2002 Pa. Leg. J. (House) 1199 (June 4, 2002)).) Thus, the contemporaneous legislative history that is available supports the Superior Court's interpretation of the Act. *See* 1 Pa.C.S. § 1921(c)(7) ("When the words of a statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters … [t]he contemporaneous legislative history."); *see also Bd. of Revision of Taxes v. City of Phila.*, 4 A.3d 610, 624 n.10 (Pa. 2010) (observing that the contemporaneous legislative history proved persuasive and served to confirm the Court's reading of the statutory language).

Second, Appellants ignore the Statutory Construction Act, which includes a list of five presumptions that should be used in ascertaining legislative intent, none of which supports their arguments. 1 Pa.C.S. § 1921 *et seq*.[3] To that end, this Court has provided the following guidance:

> In interpreting these statutes, we also must consider 'the object to be attained' by the statute; 'the former law, if any, including other statutes upon the same or similar subjects'; and 'the consequences of a particular interpretation.' 1 Pa.C.S. § 1921. In doing so, we presume that the General Assembly does not intend an absurd or unreasonable result and that the legislature intends that all provisions have effect. 1 Pa.C.S. § 1922.

[3] In addition to citing no case law whatsoever which supports their statutory construction arguments, Amici, the Pennsylvania Association for Justice and the American Association of Justice, have similarly failed to address the Statutory Construction Act.

In re Tr. Under Deed of Kulig, 175 A.3d 222, 234 (Pa. 2017). Here, a comparison of the former law (the Comparative Negligence Act, which makes no mention of strictly liable defendants in Section 7102(b)) and the current law (the Fair Share Act, which expressly "includes" actions for strict liability in the text of old Section 7102(b)) demonstrates that the General Assembly intended to supersede *Walton*. As the Superior Court explained, including the clause "including actions for strict liability" in Section 7102(a.1)(1) confirms that "the allocations of liability that had been done by a jury in negligence cases now would 'include' strict liability cases as well." (Super. Ct. Op., Appellant's App. A, at 26.) Because this Court had construed Section 7102(b) to require percentage-based comparative apportionment of liability, the General Assembly is presumed to intend the same construction be placed upon the amendment—Section 7102(a.1)(1). *Pa. State Educ. Ass'n v. Commonwealth*, 148 A.3d 142, 157 (Pa. 2016) ("The legislature is presumed to know about this body of case law, as it is well-settled that if the legislature in a later statute uses the same language used in a prior statute which has been construed by the courts, there is a presumption that the repeated language is to be interpreted in the same manner as such language had previously [been] interpreted when the court construed the earlier statu[t]e."); 1 Pa.C.S. § 1922(4) ("[W]hen a court of last resort has construed the language used in a statute, the General

Assembly in subsequent statutes on the same subject matter intends the same construction to be placed upon such language.").

Finally, the General Assembly has instructed Courts to interpret a statute "to give effect to all its provisions." 1 Pa.C.S. § 1921(a); *Commonwealth v. Anderson*, 169 A.3d 1092, 1096 (Pa. Super. Ct. 2017). Reading Section 7201(a.1)(1) to require comparative apportionment of liability in all cases gives effect to Section 7201(a.1)(3), which provides that defendants that are 60% or more liable for an injury are jointly—not severally—liable. Appellants' proposed construction of the Act, on the other hand, renders Section 7201(a.1)(3) superfluous because a *per capita* apportionment regime would eliminate joint liability in all strict liability cases *and* render the provision of the Act allowing for contribution among joint tortfeasors meaningless in strict liability cases. As the Superior Court reasoned, "it is mathematically impossible for any [strict liability] defendants to reach the 60% threshold…" in a *per capita* regime. (Super. Ct. Op., Appellant's App. A, at 31-32.)

This Court should reject Appellants' interpretation of the Act because it renders Section 7201(a.1)(3) a nullity. *See* 1 Pa.C.S. § 1921(a) ("Every statute shall be construed, if possible, to give effect to all its provisions."); *Bayview Loan Servicing, LLC v. Lindsay*, 185 A.3d 307, 312 (Pa. 2018) ("This Court may not ignore the language of a statute, nor may we deem any language to be

superfluous.") (internal quotation marks omitted); *Freundt v. DOT, Bureau of Driver Lic.*, 883 A.2d 503, 506 (Pa. 2005) ("It is well settled that a court analyzing a statute must presume the General Assembly did not intend to perform a useless act… [T]he entire statute is presumed to be certain and effective, not superfluous and without import."); *Rossi v. DOT, Bureau of Driver Lic.*, 860 A.2d 64, 67 (Pa. 2004) (The "legislature is presumed not to have intended its statutes to contain mere surplusage."). This Court should also reject Appellants' argument that Section 7201(a.1)(3) was intended to apply only to negligence actions, because it is not supported by the text of the Act or by citation to any relevant case law. (Appellants' Br. at 22.)

C. Appellants Mischaracterize The Authorities Discussing Apportionment In Asbestos Cases

Appellants argue that "Pennsylvania case law interpreting apportionment in asbestos cases indicates that an asbestos-related disease is not capable of being apportioned," citing to numerous cases decided prior to the passage of the Act. (Appellants' Br. at 25.) A closer review of these cases reveals that Appellants are incorrect, and that Pennsylvania law has always recognized that apportionment in asbestos cases *is* appropriate when there is "a reasonable basis for determining the contribution of each cause to a single harm." *Gross v. Johns-Manville Corp.*, 600 A.2d 558, 566 (Pa. Super. Ct. 1991).

For example, in *Martin v. Owens-Corning Fiberglass*, this Court did *not* hold that apportionment was categorically improper in asbestos cases. (Appellants' Br. at 25.) Instead, this Court held that the jury had improperly apportioned the verdict because it was provided "no guidance in determining the relative contributions of asbestos exposure and cigarette smoking to appellant's disability." 528 A.2d 947, 950 (Pa. 1987). This Court went on to discuss the ability of experts to provide opinions as to the propriety of apportioning damages. In the absence of that expert testimony, however, this Court concluded "[t]he causes of disability in this case do not lend themselves to separation by lay-persons on any reasonable basis." *Id*. Here, in contrast, JCI's causation expert, Dr. Crapo, testified to the different propensities, if any, of various asbestos-containing products to cause lung cancer. (R. 973a, Tr. 121-23; R. 975a, Tr. 130-31.) Indeed, given these different propensities, the jury initially found JCI not to be liable until the trial court answered the jury's question in a way that both JCI and the dissenting judge found confusing.[4] (Super. Ct. Concurring and Dissenting Op., Appellant's App. B, at 6.)

Similarly, in *Gross v. Johns-Manville Corp.*, a strict liability asbestos case, the Superior Court did *not* categorically preclude comparative apportionment. To the contrary, the Superior Court commented that "[h]ad evidence been presented

[4] JCI, in fact, cross-petitioned this Court on that basis. (*See* John Crane Inc.'s Cross-Petition for Allowance of Appeal, 86 EAL 2018, (Feb. 12, 2018).)

upon which a jury could have apportioned the comparative fault of the defendant companies such an instruction would have been appropriate." 600 A.2d at 565. In *Ball v. Johns-Manville Corp.*, the Superior Court explained that the jury was not allowed to apportion liability on the basis of causal fact because there, *unlike here*, there was no evidence of the "relative amounts of asbestos dust Mr. Ball inhaled from the various asbestos containing products to which he was allegedly exposed." 625 A.2d at 658. These opinions are consistent with others in which the courts have approved the apportionment liability between negligent defendants *and* strictly liable defendants pursuant to the comparative negligence statute. *See Dambacher v. Mallis*, 7 Phila. 14, 57 (1981) (applying comparative negligence after concluding "[a]lthough the Pennsylvania Comparative Negligence Statute does not expressly allow its application to strict liability actions, it does not prohibit it.").

Appellants nevertheless argue that it is "well established" in Pennsylvania that "liability is to be apportioned on a per capita basis in strict liability asbestos cases" because the fault-based principles of negligence do not apply. (Appellants' Br. at 21.) Appellants rely on *Walton*, 610 A.2d 454 and its progeny, *Baker*, 755 A.2d 664, but the reasoning of both cases should be disregarded in light of more recent opinions from this Court.

For example, *Walton's* reasoning that fault-based principles could not be used to apportion liability in strict liability cases was derived from *Azzarello v. Black Brothers Co., Inc.*, 391 A.2d 1020 (Pa. 1978). *See Walton*, 610 A.2d at 462 (stating that "[t]his Court has continually fortified the theoretical dam between the notions of negligence and strict 'no fault' liability") (citing *Azzarello*, 391 A.2d at 462). Recently, however, this Court has made several "cracks" in that "theoretical dam," including by expressly overruling *Azzarello* in *Tincher*, 104 A.3d at 376. In doing so, this Court remarked that decisional law under *Azzarello* had lapsed into an unprincipled, formulaic application of rhetoric, which threatened to "render the strict liability cause of action hopelessly unmoored in modern circumstances." *Id.* at 378. This Court explained that "[s]ubsequent decisional law has applied *Azzarello* broadly, to the point of directing that negligence concepts have no place in Pennsylvania strict liability doctrine; and, as we explain, those decisions essentially led to puzzling trial directives that the bench and bar understandably have had difficulty following in practice, including in the present matter." *Id*. at 376. This Court observed that "[t]he emergent single cause of action in tort – strict liability – retained … aspects of negligence and breach of warranty liability theories from which it evolved … the theory of strict liability as it evolved overlaps in effect with the theories of negligence and breach of warranty." *Id*. at 401.

This Court in *Tincher* ultimately adopted a standard of proof in strict liability cases that incorporates the element of "reasonableness" which had been previously reserved only for negligence claims. *See generally id.* This Court then remarked upon the evidentiary issues necessarily implicated by the standard of proof it had articulated, stating as follows:

> Derived from its negligence-warranty dichotomy, the strict liability cause of action theoretically permits compensation where harm results from risks that are known or foreseeable (although proof of either may be unavailable)—a circumstance similar to cases in which traditional negligence theory is implicated—and also where harm results from risks unknowable at the time of manufacture or sale—a circumstance similar to cases in which traditional implied warranty theory is implicated.

Id. at 404-05. Simply stated, the concepts that drove this Court's decision in *Walton* have been characterized most recently as formulaic and outmoded. The Superior Court's interpretation of the Act's apportionment provision is consistent with this Court's rejection of the impractical mandate of *Azzarello* that negligence concepts have no bearing on strict liability law.

Significantly, *Tincher* is also in line with a series of cases that have discredited the "each and every fiber" theory of liability. This Court has repeatedly recognized the differences between asbestos products and their propensity to cause disease, and in doing so, has held that "[t]he theory that each and every exposure, no matter how small, is substantially causative of disease may not be relied upon as a basis to establish substantial-factor causation for diseases

that are dose-responsive." *Howard v. A.W. Chesterton Co.*, 78 A.3d 605, 608 (Pa. 2013) (per curiam). These cases require that "causation experts must provide concrete testimony of causal attribution by assessing the frequency, regularity, and proximity of the plaintiff's exposure to the defendant's product." *Rost v. Ford Motor Co.*, 151 A.3d 1032, 1048 (Pa. 2016) (citing *Gregg v. V-J Auto Parts, Co.*, 943 A.2d 216, 226-27 (Pa. 2007)). The result in these cases—as it should be here—is the continued incremental development of the common law towards requiring more specific, qualitative evidence of causation factors in asbestos trials.

Appellants cite *Rost* in support of their argument that "comparison of plaintiff's other exposures to asbestos is unnecessary." (Appellants' Br. at 24). Appellants' reliance on *Rost* is misplaced, however, because this Court's statement there was related to the evidence required to establish a defendant's substantial contribution to the cause of an asbestos disease in the first instance, *not* the facts necessary to apportion liability among defendants that have already been found severally liable. *Rost*, 151 A.3d. at 1047-48. Regardless, Appellants have ignored that aspect of *Rost* which pertained to apportionment. There, this Court explained, in *dicta*, that Pennsylvania courts have recognized that it "is fundamentally unfair to hold a defendant jointly and severally liable for [an asbestos plaintiff's] injuries for a *de minimis* contribution to the plaintiff's overall exposure." *Rost*, 151 A.3d at

1044 n.7. *Rost* supports JCI's argument that comparative apportionment of liability is not only what the Act requires, but it is also "fair."

The Fair Share Act, coupled with this Court's decision to overrule *Azzarello* and allow negligence concepts to inform the jury's decision-making in strict liability cases, proves that comparative apportionment is not only possible, but preferred. Indeed, only the comparative allocation of liability puts true meaning to the Fair Share Act's purpose, whereas plaintiffs' *per capita* approach leads only to an arbitrary assignment of liability premised solely on the number of liable persons. Such a result is not "fair," is not what the legislature intended, and is not consistent with the incremental development of Pennsylvania's common law.

D. The Jury Can Apportion Liability Based Upon Facts Already In The Record

Appellants argue that "[w]here multiple asbestos-containing products have combined to produce an asbestos disease, apportionment of liability on a percentage basis in a strict liability asbestos case is inappropriate as there is no reasonable basis for a jury to determine the percentage fault of each defendant…." (Appellants' Br. at 24.) Appellants are incorrect. Dose-specific exposure and product-specific evidence of toxicity represents the best example of the state of the art scientific and medical evidence that Pennsylvania courts require, and that was presented below.

For example, the jury heard evidence regarding Mr. Roverano's different jobs, including their location and duration. (R. 429a-430a, Tr. 64-67; R. 439a, TR. 102-03; R. 654a, Tr. 46-47.) They also heard evidence that Mr. Roverano's asbestos exposure was not limited to the defendants' products, as well as evidence regarding (i) the levels of asbestos exposure associated with, (ii) the amount of dust typically released when working with, and (iii) the potency of different fibers released from different products to which Mr. Roverano was exposed. (*See* R. 430a, Tr. 67-69; R. 436a, Tr. 93; R. 440a-441a, Tr. 106-110; R. 455a, Tr.8; R. 463a-70a, Tr. 16-23; R. 497a, Tr. 50; R. 654a, Tr. 48-49, R. R. 659a-60a, Tr. 67-71; R. 973a, Tr. 121-23.) The jury also heard evidence of Mr. Roverano's "occasional" exposure to the types of products Brand installed as well as his testimony on cross-examination that he worked with JCI's products five to ten times in total. (*See* R. 483a-84a, Tr. 36-37; R. 655a-57a, Tr. 51-60.) Moreover, there was evidence that JCI's products released fibers in amounts much lower than insulation products. (R. 621a-622a, Tr. 63-69) and that chrysotile asbestos contained in the JCI products were much less dangerous than the amphibole asbestos contained in thermal insulation products to which he had been exposed. (R. 973a-974a, Tr. 122-28.) There was expert testimony that JCI's packing products emitted asbestos dust at or below background levels, as well as evidence from Appellants' own expert that products that emit fibers at or below background

levels cannot contribute to asbestos dust. (*See* R. 621a-24a, Tr. 63-73; R. 630a, Tr. 98-100; R. 775a, Tr. 98-99.) The jury also heard evidence of Mr. Roverano's thirty years of smoking. (R. 442a, Tr.114-15; R. 491a-94a, Tr. 44-47; R. 539a, Tr. 59; R. 771a, Tr. 82-83; R. 781a-83a; R. 958a-67a, Tr. 61-98.) Thus, reasonable apportionment could be made in this case based upon the facts already in the record. Indeed, juries have competently done so in the past in other cases involving JCI in jurisdictions without *per capita* apportionment. *See Jones v. John Crane, Inc.*, 132 Cal. App. 4th 990, 997 (2005) (apportioning JCI 1.95% at fault); *Cadlo v. Metalclad Insulation Corp.*, 151 Cal. App. 4th 1311, 1317 (2007) (apportioning JCI 3% at fault).

This is not to say, however, that, on remand, a trial should be limited to the evidence of record before this Court. JCI should be permitted to present more fulsome evidence against the settled defendants. Moreover, JCI was precluded from presenting evidence on the bankrupt entities' liability at trial (R. 408a, Tr. 19-20), and, accordingly, additional facts may be adduced at a new trial that will further aid the jury in apportioning liability consistent with the Fair Share Act. JCI respectfully requests a new trial on liability and damages on this basis. *See Banohashim v. R.S. Enters., LLC*, 77 A.3d 14 (Pa. Super. Ct. 2013) (holding that, where there is an apportioning error, defendants are entitled to a new trial as to both liability and damages).

E. The Act Requires Apportionment Of Liability Regardless Of The Nature Of A Plaintiff's Injury

Appellants argue that "per capita apportionment of liability is also warranted in asbestos cases because an asbestos plaintiff has suffered an indivisible injury that is not capable of being apportioned … [t]his is something the Superior Court failed to recognize." (Appellants' Br. at 23.) From this premise, Appellants argue that "apportionment of liability on a percentage basis in a strict liability asbestos case is inappropriate…." (*Id*. at 24.) Appellants once again rely upon pre-Act case law holding that an indivisible *injury/harm* cannot be apportioned, and ignore the Act's mandate that *liability* (not harm) be apportioned among the severally liable defendants and "other persons." (*See id.* at 25.)

Under pre-Act case law, the trial court was tasked with first determining as a matter of law if an *injury/harm* was capable of being apportioned. *See, e.g., Martin*, 528 A.2d at 949 ("[I]t was incumbent upon the trial court to determine that there was a reasonable basis for apportioning the *harm* between the two causes before submitting the issue to the jury)" (emphasis added; other citations omitted); *Glomb v. Glomb*, 530 A.2d 1362 (Pa. Super. Ct. 1987), *allocator denied*, 538 A.2d 876 (Pa. 1988) ("A court can direct the apportionment of liability among distinct causes only when the injured party suffers distinct *harms* or when the court is able to identify 'a reasonable basis for determining the contribution of each cause to a single *harm*.'") (emphasis added); *Voyles v. Corwin*, 441 A.2d 381, 383(Pa. Super.

Ct. 1982) (same); *Capone v. Donovan*, 480 A.2d 1249, 1251 (Pa. Super. Ct. 1984) (same).

If an injury was deemed indivisible by the court, the defendants were then deemed joint tortfeasors and, as a matter of law, the *harm* could not be apportioned. *See Capone*, 480 A.2d at 1251 ("Capone's permanent *injury* was not susceptible of a logical apportionment among the treating physicians…the harm caused as a result of their combined negligence was single and indivisible … the physicians, therefore, were joint tortfeasors"). If, on the other hand, the court determined that there were divisible injuries caused by multiple tortfeasors, the jury would then be tasked with apportioning the *harm* that was caused as a matter of fact. *See Voyles*, 441 A.2d at 383 (holding that defendants were not joint tortfeasors, the injury was divisible, and allowing apportionment of the *harm* to plaintiff).

But with the adoption of comparative negligence, the General Assembly also codified the law of apportionment within Section 7102(b). In doing so, the legislature shifted the focus away from apportioning the *harm* and placed it instead on apportioning the "causal negligence" of the defendant. *See* 42 Pa.C.S. § 7102(b) (emphasis supplied) (deleted 2011) ("each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the ***amount of causal negligence*** attributed to all defendants against whom recovery is

allowed.") (emphasis supplied); *Gross*, 600 A.2d at 558 (recognizing in an asbestos products liability case that, if the evidence supported it, a jury could be allowed to apportion damages based upon the defendants' comparative fault). Later, through the Fair Share Act, the General Assembly changed the focus again by replacing the phrase "causal negligence" with "liability", thereby recognizing that strict liability cases are indeed capable of being apportioned. 42 Pa.C.S. §§ 7102(a.1)(1) ("Where recovery is allowed against more than one person, including actions for strict liability, ***and where liability*** is attributed to more than one defendant…") (emphasis supplied). The Act therefore removed the trial court's obligation to determine in the first instance, as a matter of law, whether an *injury* is capable of being apportioned. Instead, under the Act, in *all* negligence and strict liability cases where "recovery is allowed against more than one person" the jury must be allowed to find, as a matter of fact, the comparative degree of *liability*. *Id*. The Act makes the jury's allocation of damages mandatory—"where liability is attributed to more than one defendant, each defendant *shall* be liable for that portion" of the total verdict. *Id*. Thus, the Superior Court did not "fail to recognize" that Mr. Roverano suffered from an indivisible injury in holding that the trial court erred in ruling as a matter of law that the Act did not apply.

Finally, that the legislature chose to replace the phrase "causal negligence" with "liability" instead of "fault" supports the Superior Court's ruling that a

reasonable apportionment of damages does not necessarily require a fault-based allocation method, but instead can be done based upon causation-based facts such as, in this case, the relative amount of exposure to the different "persons" asbestos products and/or the relative degree of toxicity and potency of different asbestos fibers. (*See* Super. Ct. Op., Appellant's App. A, at 28 n.9.) That Mr. Roverano's *injury* is an indivisible one is therefore of no moment under the post-Act law of apportionment. What matters are the factors that lead to the finding of each "persons'" liability. To that end, the Superior Court noted that "[t]his case does not require us to opine on the factors that should be considered in allocating liability among strictly liable tortfeasors" and acknowledged that, unless it is unreasonable, the weight of the evidence supporting allocation is "for the jury to decide" on remand. *See id*.

F. Appellants' Citation To Subsequent Legislative History Is Improper And Irrelevant

As explained in Section A, *supra*, there is no need to look to legislative history when determining whether the Fair Share Act applies to strict liability cases involving asbestos, because the text of the Act is clear. *Roverano v. John Crane, Inc.*, 177 A.3d 892, 905 (Pa. Super. Ct. 2017); 1 Pa.C.S. § 1921(a)-(b); 1 Pa.C.S. § 1903(a); *see also Commonwealth v. Hall*, 80 A.3d 1204, 1211 (Pa. 2013) ("We generally will look beyond the plain language of the statute only when words are unclear or ambiguous, or the plain meaning would lead to a result that is

absurd, impossible of execution or unreasonable.") (internal citations omitted). Appellants nevertheless offer two pieces of legislation presented, but not enacted, *after* the Fair Share Act as proof that it does not allow for comparative liability apportionment. The Statutory Construction Act provides, however, only that *"[t]he contemporaneous legislative history*" may be relevant to ascertain the General Assembly's intent when the words of a statute are not explicit. 1 Pa.C.S. § 1921(c)(7) (emphasis supplied); *see also Washington v. Baxter*, 719 A.2d 733, 738 (Pa. 1998) (emphasis supplied) ("…we determine the intention of the General Assembly by considering, among other matters, the occasion and necessity of the statute and the ***contemporaneous*** legislative history. . .While statements made by legislators ***during the enactment process*** are not dispositive of legislative intent, they may be properly considered as part of the ***contemporaneous*** legislative history.") Appellants citation to comments from legislators who proposed *different* legislation *subsequent* to the passage of the Fair Share Act that *has not been enacted* is a violation of the Statutory Construction Act's principles, and should be rejected by this Court.

II. THE FAIR SHARE ACT REQUIRES THE JURY TO CONSIDER SETTLEMENTS WITH BANKRUPT ENTITIES IN APPORTIONING LIABILITY

The Superior Court correctly held that the General Assembly intended for a jury to apportion liability to released bankrupt entities based upon the broad but unambiguous language of the Fair Share Act. This Court should affirm.

A. The Superior Court Correctly Construed The Plain Language Of The Fair Share Act

Despite Appellants' misplaced reliance on outmoded case law, the plain language of the Fair Share Act *unambiguously* "require[s] that settlements with bankrupt entities be included in the calculation of allocated liability under the statute." (Super. Ct. Op., Appellant's App. A, at 33; *see also* 1 Pa. C.S. § 1921(b) ("When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.").) The language of the Fair Share Act is broad and encompassing and expressly states, in pertinent part, as follows:

> **(a.1) Recovery against joint defendant; contribution.**
>
> > **(1)**Where recovery is allowed against more than one person, including actions for strict liability, and where liability is attributed to more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of that defendant's liability to the amount of liability attributed to all defendants ***and other persons to whom liability is apportioned under subsection (a.2)***.
> > ***
>
> **(a.2) Apportionment of responsibility among certain nonparties and effect. —**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 and who is not a party*** shall be transmitted to the trier of fact upon appropriate requests and proofs by any party. A person whose liability may be determined pursuant to this section does not include an employer to the extent that the employer is granted immunity from liability or suit pursuant to the act of June 2, 1915 (P.L. 736, No. 338), known as the Workers' Compensation Act. An attribution of responsibility to any person or

> entity as provided in this subsection shall not be admissible or relied upon in any other action or proceeding for any purpose. Nothing in this section shall affect the admissibility or nonadmissibility of evidence regarding releases, settlements, offers to compromise or compromises as set forth in the Pennsylvania Rules of Evidence. Nothing in this section shall affect the rules of joinder of parties as set forth in the Pennsylvania Rules of Civil Procedure.

42 Pa.C.S. §§ 7102(a.1)(1), 7102(a.2) (emphasis added). Put simply, "*any* . . . other person" besides a defendant "who has entered into a release with the plaintiff" and "is not a party" must be considered for purposes of apportioning liability, and by the Act's broad and plain terms, these "other persons" would include bankrupt entities. *Id.*, § 7102(a.2). Similar to this Court's reasoning regarding the broad scope of the Uniform Contribution Among Joint Tortfeasors Act ("UCATA"), 42 Pa.C.S. 8326, in *Baker v. AC&S, Inc.*—a case upon which Appellants heavily rely—the language of the Fair Share Act is "very broad" and "clearly applies to all types of" unnamed parties who have settled with the plaintiff. 755 A.2d 664, 668 (Pa. 2000). If this Court were to adopt Appellants' analysis, and limit the Fair Share Act to unnamed, settling third parties (but *not* including bankrupt entities), this Court "would essentially be engrafting a limitation on the statute which the legislature did not see fit to impose." *Id.* at 668-69.

Although the Act does not specifically use the words "bankrupt" or "bankruptcy," the Act does specifically carve out an exception for employers based

on workers' compensation immunity. *See* 42 Pa.C.S. § 7102(a.2). Critically, the General Assembly saw fit, through the unambiguous language of the Act, to distinguish between workers' compensation employers and other released third parties, like bankrupt entities, and identifies an exception to the general rule laid out in 42 Pa.C.S. § 7102(a.2) *only for the former*. It is a well-settled principle of statutory construction in Pennsylvania that "[e]xceptions expressed in a statute shall be construed to exclude all others." 1 Pa.C.S. § 1924; *see also Reginelli v. Boggs*, 181 A.3d 293, 322-23 (Pa. 2018) ("[W]here the legislature creates a statutory privilege and specifies exceptions to that privilege, we must consider that as evidence that it intended not to allow for other unspecified exceptions."); *Brown v. Levy*, 73 A.3d 514, 520 (Pa. 2013) (declining to read in a mandamus action exception to legislation which specifically provided for other exceptions and exclusions, reasoning that, because "the General Assembly chose not to specifically include mandamus actions in either the exception or the exclusion, it follows this choice was intentional"). Here, the General Assembly identified only one exception for workers' compensation employer immunity to the broad category of "other parties" identified in the Act; because bankrupt entities were not specifically excluded, this Court should presume that the General Assembly did not intend to except them from this "other parties" categories in the Act.

Appellants argue that "the legislature did not expressly state in the Act that liability could be apportioned to bankrupts" and that "the Superior Court's opinion implies that silence on the application of the Act to bankrupt entities is indicative of its intent to allow the jury to apportion liability to bankrupt entities." (Appellants' Br. at 33.) The case law upon which Appellants rely is inapposite and does not support their intentional conflation of the Act's broad language with silence. In *The Birth Ctr. v. The St. Paul Cos.*, for example, this Court was reviewing 42 Pa.C.S. § 8371, which provides that plaintiffs in actions arising from insurance policies "may" recover interest, punitive damages, and court costs and attorneys' fees. 787 A.2d 376, 386 (Pa. 2001). There, Appellee argued that, because compensatory damages were not specifically listed in this statute, *i.e.*, there was silence or an omission on compensatory damages, such damages were precluded. *Id.* This Court disagreed, reasoning that "because the legislature did not expressly alter prior law, it did not intend to change it." *Id.* at 387. Unlike *The Birth Ctr.*, where there was actual silence, here, the Fair Share Act *expressly* changed the law through its far-reaching "other parties" language to extend apportionment to bankrupt entities.

B. Legislative History Reinforces the Superior Court's Interpretation of the Act

The legislative history of the Fair Share Act and, in particular, modifications to the Act's pre-2011 language, unambiguously demonstrate that the General

Assembly intended for juries to be able to apportion liability to bankrupt entities who have entered into releases with plaintiffs. Critically, the original version of Section 7102 (*i.e.*, the Comparative Negligence Act) limited liability apportionment to defendants "against whom recovery is allowed." 42 Pa.C.S. § 7102(b) (emphasis added) (deleted 2011). Such language expressly barred juries from apportioning liability to bankrupt entities because plaintiffs would be precluded from recovering damages against them in a tort action. Through the Fair Share Act, the General Assembly abandoned the requirement that apportionment be limited to those against whom damages were actually recoverable in favor of apportionment between defendants and "other persons" "who ha[ve] entered into a release with the plaintiff with respect to the action." *Compare* 42 Pa.C.S. § 7102(b) (deleted 2011) *with* 42 Pa.C.S. §§ 7102(a.1)(1), 7102(a.2). This latter category of "other persons" significantly expands the scope of apportionment to include other releasing third parties —even where a plaintiff cannot recover damages against them in tort—like bankruptcy trusts.

This textual modification in Section 7102 is dispositive. *See* 1 Pa.C.S. § 1921(c)(5) ("[T]he intention of the General Assembly may be ascertained by considering … [t]he former law, if any, including other statutes upon the same or similar subjects."); *see also McGrath v. Bureau of Prof'l & Occupational Affs.*, 173 A.3d 656, 662-64 (Pa. 2017) (considering textual modifications in the different

versions of the Nursing Law to determine the legislature's intent in enacting its current language); *Blake v. State Civil Serv. Comm'n*, 166 A.3d 292, 298-302 (Pa. 2017) (determining legislative intent by comparing the language of prior versions of 51 PA.C.S. § 7101). By focusing on whether a non-party has entered into a *release* related to the action rather than on whether or not damages will be *recoverable* against them, the General Assembly deliberately altered the law to permit juries to apportion liability to releasing bankrupt entities.

C. Appellants' Authorities Do Not Support Their Construction of the Act

Appellants primarily rely on *Ottavio v. Fibreboard Corp.*, 617 A.2d 1296 (Pa. 1992)—which was decided *nearly two decades before* the Pennsylvania General Assembly enacted the Fair Share Act—for the proposition that courts should continue to exclude bankrupt asbestos manufacturers from verdict forms and liability apportionment calculations even after the Act's enactment. Even a cursory review of *Ottavio*, however, reveals that it should not impact this Court's analysis because the decision was based on policy considerations rendered obsolete by the Fair Share Act.

The *Ottavio* decision—which appears to be the origin for all subsequent Pennsylvania decisions holding that bankrupt entities must be excluded from verdict forms—was based on concerns that including bankrupt entities on the verdict form would violate the Bankruptcy Code's automatic stay. *See Ottavio,*

617 A.2d at 1300; *see also* 11 U.S.C. § 362(a)(1), (6) (The filing of a bankruptcy petition "operates as a stay, applicable to all entities, of … [an] action or proceeding against the debtor … to recover a claim against the debtor that arose before the commencement of the case under this title."). In *Ottavio*, however, the defendants sought an allocation of fault *under joint and several liability rules* that accounted for bankrupt entities and *a judgment* against those entities where another tortfeasor could seek contribution in a separate action. 617 A.2d at 1300-01. Such a result *would* violate the Bankruptcy Code's automatic stay provisions and be preempted by federal law.

The Fair Share Act, however, abolishes joint and several liability in most instances. *See* 42 Pa.C.S. § 7102(a.1)(2) ("Except as set forth in paragraph (3), a defendant's liability shall be several and not joint, and the court shall enter a separate and several judgment in favor of the plaintiff and against each defendant for the apportioned amount of that defendant's liability."). Moreover, by its terms, the Act prohibits the use of a liability allocation to a bankrupt entity as a basis for seeking contribution or any other recovery against the bankrupted company. *See id.*, § 7102(a.2) ("An attribution of responsibility to any person or entity as provided in this subsection shall not be admissible or relied upon in any other action or proceeding for any purpose."). It also makes the apportionment finding inadmissible in any other case. *See id.* By its express terms, the Act simply allows

the jury to calculate apportionment more equitably, which, in turn, will form the basis for judgments as to the remaining, non-settling defendants (as opposed to any bankrupt entity). Thus, unlike *Ottavio* and its progeny, which were decided under the prior joint and several liability regime, a jury's allocation of partial fault to a bankrupt entity under the Fair Share Act will not expose the bankrupt company to a judgment or claim forbidden by the Bankruptcy Code. This is consistent with the approach taken by courts both in and outside of Pennsylvania when confronted with legislation similar to the Act. *See, e.g., Slayton v. Gold Pumps, Inc.*, No. GD 03-010873, 2004 Pa. Dist. & Cnty. Dec. LEXIS 335, at *5 (C.P. Alleg., Oct. 25, 2004); *see also Bondex v. Ott*, 774 N.E.2d 82, 87 (Ind. App. 2002); *In re Shondel*, 950 F.2d 1301, 1306-07 (7th Cir. 1991).

Appellants also erroneously cite to two proposed pieces of legislation, House Bill No. 1150 ("H.B. 1150") and House Bill No. 238 ("H.B. 238"), introduced in 2013 and 2017 respectively, each of which addressed apportionment to nonparties, like bankrupt entities, in an improper attempt to argue that "there would be no reason for the legislation to propose a new law to permit apportionment of liability to bankrupt entities if that was the law already under [the Fair Share Act]." (Appellants' Br. at 34.) This argument ignores that the bills were not only *never* enacted, but that they were never even submitted for a vote. (*See* Bill Info., H.B. 1150, 2013 Sess., https://www.legis.state.pa.us/cfdocs/billInfo/bill_votes.cfm?sy

ear=2013&sind=0&body=H&type=B&bn=1150 (No votes case on H.B. 1150); Bill Info., H.B. 238, 2017 Sess., https://www.legis.state.pa.us/cfdocs/billInfo/bill_votes.cfm?syear=2017&sind=0&body=H&type=B&bn=238 (No votes cast on H.B. 238.)) In both instances, these bills were referred to committee and died without further action being taken. (*See* H.B. 1150, 2013 Sess. (Pa. 2013); Bill Info., H.B. 1150, 2013 Sess., https://www.legis.state.pa.us/cfdocs/billInfo/BillInfo.cfm?syear=2013&sind=0&body=H&type=B&bn=1150 (H.B. 1150 referred to judiciary on April 8, 2013); H.B. 238, 2017 Sess. (Pa. 2017); Bill Info., H.B. 238, 2017 Sess., https://www.legis.state.pa.us/cfdocs/billInfo/BillInfo.cfm?syear=2017&sind=0&body=H&type=B&bn=238 (H.B. 238 referred to judiciary on January 31, 2017.)) Unenacted bills, submitted after the passage of the Act, do not shed any light on its proper construction.

Likewise, Appellants argue that a ruling that apportioning liability to bankrupt entities is "inconsistent" with the UCATA. *Id.* The UCATA and the cases analyzing it, however, would not control. The UCATA itself is a contribution statute based on parties' joint and several liability. *See* 42 Pa.C.S. § 8322 ("'[J]oint tort-feasors' means two or more persons ***jointly or severally liable in tort*** for the same injury to persons or property, whether or not judgment has been recovered against all or some of them.") (emphasis added); *see id.*, § 8326 ("A release by the injured person of ***one joint tort-feasor***, whether before or after

judgment, does not discharge the other tort-feasors unless the release so provides, but reduces the claim against the other tortfeasors in the amount of the consideration paid for the release or in any amount or proportion by which the release provides that the total claim shall be reduced if greater than the consideration paid.") (emphasis added). Moreover, the critical feature in all of the cases cited by Appellants for the proposition that the Superior Court's ruling on bankrupt entities would be inconsistent with the UCATA was a concern that implementing apportionment, as requested by the defendants, would all but "eradicate the principles of joint and several liability" in Pennsylvania. *Baker v. AC&S, Inc.*, 729 A.2d 1140, 1151 (Pa. Super. Ct. 1999); *see id.* at 1149-50; *see also Baker*, 755 A.2d at 669. As described above, the Fair Share Act has already largely abolished joint and several liability. In most instances, each defendant is now responsible only for its portion of fault, and judgment is only entered against non-settling defendants. Accordingly, the UCATA and the cases analyzing it are unpersuasive.

D. The Fair Share Act Signaled A Deliberate Change In Pennsylvania Public Policy To Become More Business-Friendly

Appellants wrongly assert that "[a]llowing bankrupts on the verdict sheet would not make the plaintiff whole," adding that this is in opposite to Pennsylvania policy. (Appellants' Br. at 36-37.) This argument ignores the possibility of recovery from bankruptcy trusts. Moreover, and tellingly, Appellants can cite only

pre-Fair Share Act case law to support their policy argument that courts will err on the side of providing plaintiffs with a windfall over fairness to the non-settling asbestos defendants. *See id.* (citing *Baker*, 755 A.2d at 670, *Walton.*, 610 A.2d at 461, and *Johnson v. Beane*, 664 A.2d 96, 100 (Pa. 1995)). This is because the Fair Share Act represented a deliberate shift in policy reprioritizing the Pennsylvania economy and reinvigorating business here by protecting peripheral defendants from having to pay the lion's share of damages based on principles of joint and several liability. As then-Governor Tom Corbett announced on June 28, 2011, the date he signed the Fair Share Act:

> [T]he "Fair Share Act," … reforms how damages are recovered in civil lawsuits, ensuring an equitable framework for litigation in the future and improving Pennsylvania's business climate. The new law will keep businesses and health care providers from being driven out of the state by frivolous litigation, a problem that discourages innovation, inflates insurance costs and kills jobs. "The Fair Share Act is a key component in addressing one of the most important issues to Pennsylvania: jobs," Corbett said, before signing the bill into law in the Capitol Rotunda. "This bill announces to the rest of the world that Pennsylvania is open for business. This legislation is critical to improving the state's legal climate, which has direct bearing on the economic climate," Corbett said. "It affects the cost of goods and services. It affects the cost and availability of health care. It will encourage companies to move here, grow here and stay here." Under the Fair Share Act, each defendant pays only his share of the judgment, which is determined by a judge or a jury. In the past, if there was more than one defendant and one could not pay, the other defendant would have to pay the full amount. At times, parties only marginally responsible were unfairly forced to pay an entire amount. "Tort reform legislation ensures that a party's level of financial responsibility is assessed in a fair and equitable manner, rather than based on its financial assets."

2011 Legis. Bill Hist. PA S.B. 1131, Governor's Message (June 8, 2011). The Fair Share Act represented a significant shift in Pennsylvania policy in and outside of asbestos cases, and this Court should affirm the Superior Court's decision, upholding that change in policy and correctly applying the Fair Share Act to allow the jury to apportion liability to bankrupt entities.

A review of the history of asbestos litigation sheds light on the intent of the Fair Share Act in including bankrupt entities among those persons who must be apportioned liability. Commentators generally agree that for many years the primary defendants in asbestos cases were business entities that mined asbestos or manufactured amphibole-containing thermal insulation. *See* Mark A. Behrens, *Asbestos Trust Transparency*, 87 FORDHAM L.R. 107 (2018); Victor E. Schwartz & Mark A. Behrens, *Asbestos Litigation: The 'Endless Search For A Solvent Bystander*, 23 WIDENER L. J. 59, 59-61 (2013); James S. Kakalik *et al.*, *Costs of Asbestos Litigation*, at 3 (RAND Corp. 1983), *available at* https://www.rand.org /pubs/reports/R3042.html. Many historically have considered these companies to be "the most culpable by reason of the types of products that they sold." William P. Shelley *et al.*, *The Need for Transparency Between the Tort System and Section 524(g) Asbestos Trusts*, 17 NORTON J. BANKR. L & PRAC. 257, 257 (2008), available at https://www.gordonrees.com/Templates/media/files/pdf/Apr%2020

08%20NJBLP%20Shelley%20Cohn%20Arnold%20article%20copyright%2004-21-2008.pdf; *see also Bartel v. John Crane*, 316 F. Supp. 2d 603, 605 (N.D. Ohio 2004) (observing that "[w]hile there is debate in the medical community over whether chrysotile asbestos is carcinogenic, it is generally accepted that it takes a far greater exposure to chrysotile fibers than to amphibole fibers to cause mesothelioma"). Hundreds of thousands of tort claims were brought against these major asbestos producers, and by the late 1990s, there was an "elephantine mass" of asbestos cases, which the U.S. Supreme Court referred to as a "crisis." *See Amchem. Prods., Inc. v. Windsor*, 521 U.S. 591, 597 (1997).

According to commentators, the "[m]ass filings pressured most of the lead defendants and scores of other companies into bankruptcy, including virtually all manufacturers of asbestos-containing thermal insulation." Behrens, *Asbestos Trust Transparency*, at 107; Steven J. Carroll *et al.*, *Asbestos Litigation*, at 67 (RAND Corp. 2005), *available at* https://www.rand.org/content/dam/rand/pubs/monographs/2005/RAND_MG162.pdf. Between 2000 and 2002 alone, there were nearly as many asbestos-related bankruptcies as there had been in the prior two decades combined. Mark D. Plevin *et al.*, *Where Are They Now, Part Eight: An Update on Development in Asbestos-Related Bankruptcy Cases*, 16-2 Mealey's Asb. Bankr. Rep. 22, 40-42 chart I (Sept. 2016). These resulted in the creation of bankruptcy trusts with billions of dollars collectively available to pay plaintiffs. Behrens,

Asbestos Trust Transparency, at 111-12; *see also* S. Todd. Brown, *How Long Is Forever This Time? The Broken Promise of Bankruptcy Trusts*, 61 Buff. L. R. 537, 537 (2013); U.S. Gov't Accountability Office, GAO-11-819, *Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts*, at 3 (Sept. 2011), *available at* https://www.gao.gov/assets/590/585380.pdf.

As one commentator observed, "[i]n response to the departure of the major asbestos product manufacturers from the tort system, plaintiffs' counsel began targeting defendants whose involvement with asbestos was increasingly peripheral with regard to market share and/or the types of products manufactured (such as products where only minor amounts of asbestos was used or where any asbestos ordinarily was completely encapsulated)." Shelley *et al.*, *The Need for Transparency*, at 258; Patrick M. Hanlon & Anne Smetak, *Asbestos Changes*, 62 N.Y.U. Ann. Surv. Am. L. 525, 556 (2007); Marc C. Scarcella *et al.*, *The Philadelphia Story: Asbestos Litigation, Bankruptcy Trusts and Changes in Exposure Allegations From 1991-2010*, 27-17 Mealey's Litig. Rep. Asb. 21, 1 (Oct. 2012). Notwithstanding these defendants' often *de minimus* contribution to the plaintiff's exposure, in countless cases plaintiffs nationwide successfully sought to use joint and several liability rules to hold these peripheral defendants liable for a plaintiff's entire award. *See id.*; *see also* Schwartz & Behrens, *Asbestos Litigation: The "Endless Search for a Solvent Bystander,"* at 61 ("Parties formerly

viewed as peripheral defendants are now bearing the majority of the costs of awards related to decades of asbestos use.").

To be sure, "[f]ull compensation of victims has always been a primary goal of the tort system," and where there are multiple tortfeasors, historically, "there has been a tendency by courts to ensure full compensation for plaintiffs even if that may mean that some tortfeasors are forced to pay more than their allocable share of damages." Shelley *et al.*, *The Need for Transparency*, at 265. In the context of asbestos litigation and the aforementioned landscape, though, there has been an incremental chipping away of this principle in light of the fact that joint and several liability has in many instances led to manifestly unjust results. *See id.* In the face of these issues, many jurisdictions have adopted tort reforms that do away with joint and several liability altogether. *See id.*, at 265-66. In those states, peripheral defendants are required to pay only the percentage of liability actually assigned by them to the jury. *See id.* None of these reforms is intended to deprive those afflicted with mesothelioma and other serious asbestos-related disease from recovering what it is owed to them. Rather, "it's a matter of the right companies paying the right amounts." Michael Tomsic, *Case Sheds Light on the Murky World of Asbestos Litigation*, NPR (Feb. 4, 2014, 4:00PM), http://www.npr.org/

2014/02/04/271542406/case-sheds-light-on-the-murky-world-of-asbestos-litigation. It is this trend away from joint and several liability that informed the General Assembly's decision to enact the Fair Share Act.

CONCLUSION

Accordingly, for the reasons stated above, JCI respectfully requests this Court affirm the ruling of the Superior Court and remand for further proceedings consistent with its order, or for such other or further relief as this Court deems just and appropriate.

November 19, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 2135, I certify the following:

This brief complies with the type-volume limitation of Rule 2135; this brief contains 13,101 words excluding the parts of the brief exempted by this rule.

/s/ William R. Adams

AFFIDAVIT OF SERVICE

DOCKET NO 26 EAP 2018

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William C. Roverano and Jacqueline Roverano

v.

John Crane, Inc. and Brand Insulation, Inc.

----------X

I, Elissa Diaz, swear under the pain and penalty of perjury, that according to law and being over the age of 18, upon my oath depose and say that:

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