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Patrick Lavelle

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TORT LAW — INSURANCE COVERAGE — INDEMNITY — The Pennsylvania Supreme Court held that in seeking indemnity from an insurance carrier for a claim arising out of the delivery of "professional health care services," the actions of medical professionals will constitute such services when the act that caused the harm amounts to a medical skill associated with specialized training.

Physicians' Insurance Company v. Pistone, 726 A.2d 339 (Pa. 1999).

In September of 1993, Annette Yaworsky was admitted to Pottsville hospital complaining of abdominal pain.[1] Dr. Francis J. Pistone was the emergency physician on duty at the time, and he examined Yaworsky, ordering a series of tests.[2] During the ensuing days Yaworsky underwent surgery for gallstones at the hands of other physicians associated with the hospital.[3] On September 22, 1993, while Yaworsky was recovering, Pistone appeared in her room ostensibly to conduct a physical examination.[4] During this examination Pistone proceeded to fondle Yaworsky's breasts, and while so doing exposed his genitals and proceeded to masturbate.[5] As a result of these actions, Pistone was charged under the Pennsylvania Crimes Code with indecent assault and indecent exposure, which charges were subsequently disposed of through a plea agreement.[6]

Yaworsky and her husband filed suit in the Schuykill County Court of Common Pleas against Pistone, his employer Associated Surgeons, and the hospital.[7] The suit alleged negligence on the part

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* Senior Staff Member, Volume 38, *Duquesne Law Review*; J.D. 2000, Duquesne University School of Law; B.A. 1996, Pennsylvania State University.

1. Physician's Ins. Co. v. Pistone, 726 A.2d 339, 340 (Pa. 1999).
2. *Pistone*, 726 A.2d at 340.
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *See* Schuykill County case No. S-494-1995, Baldwin, J. (entering summary judgment

of the doctor for exposing the plaintiff to his perversion, on the part of Associated for having hired Pistone, and on the part of the hospital for granting Pistone privileges.[8] Both Pistone and Associated requested their medical malpractice insurance carrier, Physicians' Insurance Company, to defend the case on their behalf, but the carrier denied coverage.[9] Thereafter Pistone failed to file an answer and consequently, a default judgment was entered against him.[10]

Physician's Insurance Company then filed an action seeking a declaratory judgment as to their duty to defend this case under the contract of insurance, and followed with a cross-motion for summary judgment.[11] The Yaworskys also filed a motion for summary judgment, and the trial court granted summary judgment in favor of Physician's Insurance Company.[12] The Yaworskys appealed to the superior court, where the decision of the trial court was affirmed.[13] The Pennsylvania Supreme Court granted allocatur to determine what test Pennsylvania should use when deciding if otherwise tortious conduct constituted professional health care services, thereby triggering the medical malpractice insurance carrier's duty to indemnify.[14]

In searching for the answer to the question, the Pennsylvania Supreme Court looked to the law of other states and found that three viable standards exist for determining the scope of the term "professional health care services." One approach is embodied in the law of Arizona and is denominated the "intertwined with and inseparable approach."[15] Under this approach, conduct that is tortious may nonetheless be professional health care services when the conduct is intertwined with and inseparable from the services

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in favor of the insurer).

8. *Pistone*, 726 A.2d at 340.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Pistone*, 726 A.2d at 340.

14. *Id.* Representing the parties before the supreme court were attorney Michael J. Kowalski of Wilkes Barre for Physicians Insurance Co. & Professional Adjustment; attorney Edward H. Heitmiller of Pottsville for Francis Pistone, M.D.; and attorneys Frederick J. Fanelli and Sudhir R. Patel of Pottsville for Annette and John Yaworsky. *Id.*

Justice Sandra Schultz Newman delivered the opinion of the court, joined by Chief Justice John P. Flaherty, Jr. and Justices Ralph J. Cappy, Ronald D. Castille and Thomas G. Saylor. *Id.* Justice Stephen A. Zappala concurred in the result. *Id.* Justice Russell M. Nigro filed a dissenting opinion. *Id.* at 344 (Nigro, J., dissenting).

15. St. Paul Fire & Marine Ins. Co. v. Asbury, 720 P.2d 540, 542 (Az. 1986).

provided.[16]

The second approach is that espoused by the Supreme Court of New Jersey, referred to as the "substantial nexus test," which asks the question whether there exists a nexus between the offensive conduct of the provider and the professional health care services being administered.[17] New Jersey has found that the required nexus existed when the tortious conduct complained of occurred during the course of a medical examination to which the plaintiff consented.[18]

The final approach, and the one adopted by our supreme court in the instant case, is entitled the *Marx* test, referencing the case in which the Nebraska Supreme Court outlined the parameters of the test.[19] In that case it was determined that a malpractice insurer's liability should be limited to answering in causes of action that arise from rendering of professional acts or services.[20] The Nebraska Supreme Court further defined professional acts or services as those that imply an intellectual skill and require the use or application of special learning or attainments of some kind.[21] The Massachusetts Supreme Court adopted and further clarified the *Marx* test in *Roe v. Federal Insurance Co.*, when it held that in order for a malpractice insurer to be liable, the harm complained of must follow from a medical act or service, not an act or service requiring no professional skill.[22]

The Pennsylvania Supreme Court adopted the *Marx* test as applied by the Massachusetts Supreme Court in *Roe* as the legal standard against which the liability of malpractice insurers should be measured.[23] This ruling will require future courts to focus not on the title or position of the person performing the act, but upon the act itself. A malpractice insurance carrier will not be liable for damages caused by its insured for acts which fall outside of the parameters of the normal acts or services associated with the particular profession.

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16. *Id.* at 542.

17. *Pistone*, 726 A.2d at 344. (discussing Princeton Ins. Co. v. Chunmuang, 678 A.2d 1143 (N.J. Super. Ct. 1996).).

18. *Id.*

19. Marx v. Hartford Acc. & Indemnity Co., 157 N.W. 2d 870, 871 (Neb. 1968).

20. *Id.* at 871.

21. *Id.* at 872.

22. Roe v. Federal Ins. Co., 587 N.E. 2d 214, 217 (Mass. 1992).

23. *Pistone*, 726 A.2d at 344.

TORT LAW — NEGLIGENCE — SUDDEN EMERGENCY DOCTRINE — The Pennsylvania Superior Court held that the "sudden emergency doctrine" is not an affirmative defense which must be pleaded as new matter under the Pennsylvania Rules of Civil Procedure.

Leahy v. McClain, 732 A.2d 619 (Pa. Super. Ct. 1999), appeal denied, 751 A.2d 192 (Pa. Dec. 16, 1999).

During the evening hours of January 26, 1994, the plaintiff was traveling south on a two lane highway in the southern Montgomery County borough of Plymouth Meeting, Pennsylvania.[24] It was dark and it was snowing, casuing the roadway to be slippery.[25] At a point just south of the intersection of Butler Pike and Township Line Road, the plaintiff lost control of her vehicle and slid into a snow bank off of the west side of the roadway, coming to rest facing east and blocking the southbound lane of traffic.[26] The highway at this location was described as having a drastic downward slope.[27] A short time later, the defendant approached the accident scene from the north and was suddenly faced with the blocked road situation created by the plaintiff.[28] Faced with the choice of going right into a clump of trees, going left into oncoming traffic, or crashing into the roadway obstruction, the defendant chose the latter and the ensuing collision resulted in the plaintiff's injuries.[29]

The plaintiff brought a negligence action against the defendant in the Montgomery County Court of Common Pleas; the defendant's answer and new matter did not raise the sudden emergency doctrine.[30] That proceeding ended when the court entered judgment for the defendant on a jury verdict, based on a determination that the defendant was not negligent.[31] The plaintiff appealed to the Pennsylvania Superior Court.[32] The principal issue on appeal was whether the sudden emergency doctrine is an affirmative defense that must be pleaded specifically before it will support a jury

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24. Leahy v. McClain, 732 A.2d 619, 620 (Pa. Super. Ct. 1999) appeal denied, 751 A.2d 192 (Pa. Dec. 16, 1999). The original plaintiff and appellant in this case was Valerie J. Leahy. The defendant and appellee was Gary McClain. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Leahy*, 732 A.2d at 620.

30. *Id.* at 619. *See* Montgomery County Court of Common Pleas, Civil Division 95-23676, Lowe, J. (entering judgment for the defendant upon jury verdict).

31. *Leahy*, 732 A.2d at 620.

32. *Id.*

instruction.[33]

The trial court had concluded that the sudden emergency doctrine was not an affirmative defense, and the superior court agreed.[34] As support for its conclusion, the superior court looked to the ruling of the Pennsylvania Supreme Court in the 1995 case of *Lockhart v. List*.[35] In that case, the supreme court described the sudden emergency doctrine as follows:

> The rule recognizes that a driver who, although driving in a prudent manner, is confronted with a sudden or unexpected event which leaves little or no time to apprehend a situation and act accordingly should not be subject to liability simply because another perhaps more prudent course of action was available. . . . [A] person confronted with a sudden and unforeseeable occurrence, because of the shortness of time in which to react, should not be held to the same standard of care as someone confronted with a foreseeable occurrence.[36]

In arriving at its conclusion, the *Leahy* court relied upon the *Restatement (Second) of Torts* for authority in holding that the sudden emergency doctrine does not act as a defense per se but merely a factor in determining the reasonableness of the actor's conduct.[37] The law only requires that a person act reasonably in response to the circumstances associated with the situation confronting him.[38] Therefore, in assessing the conduct of a person confronted with a sudden and unexpected (unforeseeable) situation, the court and jury in determining the propriety of the actor's conduct must take into account the fact that he is in a position where he must make a speedy decision between alternative courses of action and that, therefore, he has no time to make an accurate forecast as to the effect of his choice.[39]

TORT LAW — CONTRACTUAL DUTY — EDUCATIONAL MALPRACTICE — The Pennsylvania Superior Court held that the relationship between a

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33. *Id.*

34. *Id. Leahy*, at 621. Representing the parties before the superior court were attorney Edward A. Stern of Conshohocken for Valerie Leahy, and attorney Adam A. Desipio of Norristown for Gary McClain. *Id.* at 620.

Judge Joseph A. Hudock delivered the opinion of the court, joined by Judge J. Michael Eakin and Judge John L. Musmanno. *Id.*

35. *Id.* at 622. *See* Lockhart v. List, 665 A.2d 1176 (Pa. 1995).

36. *See Lockhart*, 665 A.2d at 1180.

37. *Id.*

38. *Id. See also* RESTATEMENT (SECOND) OF TORTS § 296(1), cmt.(b) (1965).

39. *See Lockhart*, 665 A.2d at 1180.

University and a student is contractual in nature, and the student may bring a cause of action against the University for breach of contract where the college ignores the provisions of the pact contained in the written material distributed in association with the offer to confer a degree.

Swartley v. Hoffner, 734 A.2d 915 (Pa. Super. Ct. 1999), appeal denied, 747 A.2d 902 (Pa. Dec. 9, 1999).

In 1985, Judith Swartley enrolled at Lehigh University ("the University") as a Ph.D. candidate in Industrial Engineering.[40] Following the timely completion of her formal course work, Swartley selected Dr. Mikell Groover as her advisor and chair of the dissertation committee empaneled to review and approve her dissertation on the subject of "progress inventory."[41] Swartley and Groover together selected the remaining four members of the committee.[42] As work progressed on the dissertation, Swartley received feedback and criticism of her work from the members of the dissertation committee, the most significant being directed toward the lack of meaningful statistical or mathematical analysis of her research data.[43] The presence of these problems in Swartley's work resulted in a delay in scheduling her oral defense of the work on two separate occasions.[44]

In 1990, Swartley took a leave of absence from her studies due to a pregnancy, and the leave was extended to allow for her recovery from complications resulting from the pregnancy.[45] By the time Swartley returned to school in 1993, it had become necessary to replace two members on the dissertation committee.[46] With Swartley's approval, Groover appointed Dr. George Wilson and Dr. Keith Gardiner, who were ultimately named as defendants in this case.[47] After spending another year working on her dissertation, Swartley submitted to an oral defense of her work in December of 1994.[48] Following this review, the dissertation committee voted three to two to deny the award of a Ph.D., in effect giving the

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40. Swartley v. Hoffner, 734 A.2d 915, 917 (Pa. Super. Ct. 1999), appeal denied, 747 A.2d 902 (Pa. Dec. 9, 1999).
41. *Swartley*, 734 A.2d at 917.
42. *Id.*
43. *Id.*
44. *Id.*
45. *Swartley*, 734 A.2d at 917.
46. *Id.*
47. *Id.*
48. *Id.*

student a failing grade.[49]

Swartley brought this suit in the Northampton County Court of Common Pleas, for educational malpractice and breach of contract against the University and its personnel, alleging that the University failed to educate her and that the decision of the dissertation committee amounted to arbitrary and capricious conduct.[50] At the close of the discovery phase of the case the University and its personnel moved for summary judgment, which was granted by the trial court.[51] Swartley appealed that ruling to the superior court, and the superior court affirmed.[52]

In initially addressing Swartley's claims, the court cited to previous rulings which refused to recognize a general cause of action based on educational malpractice where the allegation was simply that the educational institution failed to provide a quality education.[53] The court did note, however, that the door had been opened for a cause of action against an educational institution for breach of contract in the case of *Boehm v. University of Pennsylvania School of Veterinary Medicine*.[54] In that case the superior court concluded that the relationship which exists between a school and its students is contractual in nature.[55] Adopting the rule of *Boehm* in the case *sub judice*, the court concluded that a student can bring a cause of action against an educational institution for breach of contract where the institution violates or ignores the provisions of the contract which consist of the written guidelines, policies and procedures contained in the written materials distributed to a student over the course of their enrollment.[56]

In finding that Swartley's claim of breach of contract lacked merit, the court cited Swartley's lack of any evidence of the existence of a contractual provision setting forth the duties of a dissertation committee, or any other link between her allegations

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49. *Id.*

50. *Swartley*, 734 A.2d at 917.

51. *Id.*

52. *Id.* Representing the parties at the superior court were attorney Kevin T. Fogerty of Allentown for Judith Swartley, and attorney John F. Hunsicker, Jr. of Philadelphia for Joel Hoffner, et al. *Swartley*, 734 A.2d at 916.

Judge Olszewski delivered the opinion of the court, including Judges Michael T. Joyce and James R. Cavanaugh. *Id.* at 916.

53. *Id.* at 918 (citing Cavaliere v. Duff's Business Institute, 605 A.2d 397 (Pa. Super. Ct. 1992)).

54. *Id.* at 919 (citing Boehm v. University of Pa., 573 A.2d 575 (Pa. Super. Ct. 1990)).

55. *Swartley*, 734 A.2d at 919.

56. *Id.*

and the contractual relationship between the university and its students.[57]

Swartley also claimed that the provisions regarding the requirements for candidates for the Ph.D. in Industrial Engineering at Lehigh University support her contention that once she was scheduled to participate in an oral defense of her dissertation, there was a presumption that the work had been passed upon and approved by the dissertation committee.[58] The court characterized this interpretation as "tortured," and citing to the provision in the rules which allowed for review and revision of the dissertation following the oral defense concluded that Swartley's contention that the dissertation committee must vote to pass the student's dissertation before scheduling an oral defense was contrary to the plain meaning and logic of the provisions.[59]

In addressing Swartley's final contention that the committee members' actions were arbitrary and capricious, the superior court stated that generally the courts are not now, nor will they ever be, expert in all fields of academic endeavor.[60] Based upon the foregoing, the court recognized that the standard of review to be applied to essentially academic decisions is necessarily a limited one.[61] The court concluded, therefore, that when judges are asked to review the substance of purely academic decisions, they should show great respect for the professional judgment of a faculty and not disturb their findings unless it is clear that their judgment was the result of a clearly unprofessional exercise or deviated substantially from the accepted academic norms.[62]

The superior court, through the application of the rules enunciated by the *Boehm* court, found that a contract existed between the University and its student. The terms governing that relationship were found to be contained in the written materials distributed to the student by the institution. In determining whether, on the facts of this case, the actions of the University faculty amounted to a breach of contract, the superior court found that the materials distributed to the student did not contain a term delineating the duties of a dissertation committee. Absent such a

57. *Id.*

58. *Id.* at 920.

59. *Id.* at 920, 921.

60. *Id.* at 921.

61. *Id.* (citing Regents of the Univ. of Mich. v. Ewing, 474 U.S. 214 (1985)). *See also* Schulman v. Franklin & Marshall College, 538 A.2d 49 (Pa. Super. Ct. 1988).

62. *Swartley*, 734 A.2d at 921.

term, the judgment of such a committee would be viewed as and academic decision. The court reasoned that judicial tribunals lack the expertise to second guess such decisions, and in the absence of evidence to indicate that such decisions deviated substantially from the norm, the court would defer to the professional judgment of school authorities.

TORT LAW — STRICT LIABILITY — EFFECT OF RELEASE — The Pennsylvania Superior Court held that a court, in assessing liability among joint tortfeasors in a strict liability case, must give effect to the terms of a "pro tanto" release when the amount of the settlement is less than the plaintiff's total claim.

Baker v. ACandS Inc., 729 A.2d 1140 (Pa. Super. Ct. 1999), affirmed, 755 A.2d 664 (Pa. June 26, 2000).

The original plaintiff, Albert J. Baker, brought this action in strict liability and negligence against ACandS Inc. ("ACandS"), and four other companies for injuries he sustained as a result of his exposure to asbestos during his employment.[63] The case was filed in the Philadelphia County Court of Common Pleas, and was reverse bifurcated in accordance with the local rules of that court regarding asbestos cases.[64] Following the testimony on damages, a jury awarded the plaintiff compensatory damages in the amount of two million dollars, and awarded the plaintiff's wife $200,000 in damages for loss of consortium.[65] Following this phase of the proceedings, the plaintiff settled with four of the defendants, negotiating "pro rata" releases with three defendants, and negotiating a "pro tanto" release with the Manville Personal Injury Settlement Trust ("Manville Trust") in the amount of $30,000 dollars.[66] In the interim between the damages phase and the liability phase, the plaintiff died of his asbestos related lung cancer and his wife, Suzanne Baker, was substituted as plaintiff in her capacity as administratrix of the estate.[67]

As a result of the prior settlements, the only defendant remaining in the case at the liability phase of the case was ACandS. [68] At the conclusion of this phase, the court found all five of the remaining

63. Baker v. ACandS Inc., 729 A.2d 1140, 1143 (Pa. Super. Ct. 1999), affirmed, 755 A.2d 664 (Pa. June 26, 2000).

64. *Id.* Judge Mirarchi presided over the damages phase. *Id.*

65. *Id.*

66. *Id.* n.3.

67. *Id.* n.2.

68. *Baker*, 729 A.2d at 1144. The liability phase was tried before the Honorable Victor J. DiNubile, Jr., sitting without a jury. *Id.*

defendants liable for the plaintiff's injuries and molded the verdict to reflect a "pro rata" apportionment of liability.[69] In so doing, the court disregarded the settlement releases negotiated between the plaintiff and the settling tortfeasors, finding that no tortfeasor should be liable for more than their pro rata share.[70] Accordingly, it ordered ACandS to pay one fifth (20%) of the total award plus delay damages totaling in excess of $17,000 dollars.[71] The plaintiff appealed, asserting that ACandS should have been liable for the remainder of the pro rata share assigned to the Manville Trust under the doctrine of joint and several liability.[72] ACandS filed a cross appeal on the issue of whether the evidence presented at the liability phase was sufficient to support a finding of liability against ACandS. [73]

The Pennsylvania Superior Court concluded that the issue in this case was to determine whether, in the context of a strict liability situation, the shortfall occasioned by limits placed by court supervised agreements upon recoveries from the Manville Trust in asbestos cases may be recovered from a non-settling joint tortfeasor following the granting of a "pro tanto" release to the trust.[74]

The Manville Trust was created to pay health claims brought against the Johns-Manville Corporation as a result of asbestos exposure.[75] After the trust became insolvent following an excess of claims and unanticipated large awards, the trust was restructured via a class action suit which resulted in a settlement by which plaintiffs, such as the one herein, would receive amounts equaling 10% of the liquidated damages established by the trust.[76] In this

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69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* at 1140.

73. *Baker*, 729 A.2d at 1143.

74. *Id.* at 1144. Representing the parties were attorney R. Bruce McElhone of Philadelphia for Suzanne Baker, and attorney Robert W. Rowan of Philadelphia for ACandS Inc. *Id.* at 1143.

This case was argued before the superior court sitting en banc. Judge Berle M. Schiller delivered the opinion of the court, joined by Judges James R. Cavanaugh, John T.J. Kelly, Jr. and Correale F. Stevens. *Id.* at 1143. Judge Maureen Lally-Green authored a concurring statement. *Id.* at 1154 (Lally-Green, J., concurring). Judge Joseph A. Del Sole joined the majority and filed a concurring statement. Id. at 1154 (Del Sole, J., concurring). Judge J. Michael Eakin filed a dissenting opinion, joined by President Judge Stephen J. McEwen, Jr. and Judge Michael T. Joyce. Id. at 1155 (Eakin, J., dissenting).

75. *Id.* at 1145.

76. *Id.* *See* In re Joint Eastern & Southern Districts Asbestos Litigation, 929 F. Supp. 1 (S.D.N.Y. 1996), *aff'd*, 100 F.3d 944 (2nd Cir. 1996).

case, the total payable by the trust was $30,000, which amount is represented by the settlement amount in the "pro tanto" release granted to the trust by the plaintiff.[77] According to the provisions of the trust, any amounts paid by the trust under the agreement are applied as a set-off against the claim of the plaintiff as determined by the law of the state of the proceeding.[78]

In determining the law applicable to the particular set-offs in this case, the superior court began by reviewing the Pennsylvania Uniform Contribution Among Tortfeasors Act ("UCATA").[79] The court noted that the statute, by definition, makes joint tortfeasors jointly and severally liable.[80] The statute also contains provisions which allow for the settlement of a claim against one joint tortfeasor without effecting the plaintiff's ability to recover from the remaining tortfeasors.[81] Also, such a release does not relieve a settling tortfeasor from liability for contribution unless the release is given before the right to contribution accrues to another, and the plaintiff agrees in the release to a reduction in the amount of his claim equal to the pro rata share of the released tortfeasor.[82]

The court also outlined the parameters within which parties to a suit could construct a settlement agreement, concluding that the law in Pennsylvania gives effect to the plain meaning of the language of such a release.[83] The court also noted that the law allows for the parties to a release to select either of two options regarding the extent of the reduction in the plaintiff's claim against any non-settling tortfeasors resulting from such settlements.[84] The plaintiff and the settling party can agree to a "pro tanto" release which will reduce the plaintiff's claim against non-settling tortfeasors by the amount actually received from the settling tortfeasor, or they can agree to a "pro rata" release which reduces the plaintiffs claim by the amount of the settling tortfeasor's pro rata liability regardless of the amount of the consideration payed for the release.[85]

The defendant ACandS argued that the rule in cases such as this

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77. *Baker*, 729 A.2d at 1145.

78. *Id.* at 1146.

79. *Id.* (citing Pennsylvania's Uniform Contribution Among Tortfeasors Act, 42 Pa.C.S.A. § 8321 et seq.).

80. *Id.*

81. *Id.* at 1147.

82. *Baker*, 729 A.2d at 1147.

83. *Id.*

84. *Id.* at 1148.

85. *Id.* at 1147 (citing Wirth v. Miller, 580 A.2d 1154 (Pa. Super. Ct. 1990)).

was set forth in the case of *Walton v. Avco*, which would support a finding that the defendant should be responsible for only its pro rata share regardless of the existence of any prior settlements.[86] The court rejected this argument, stating that *Walton* did not stand for such a broad application of the rule, as such would undermine and negate the concept of and purposes behind the law of joint and several liability applicable to cases such as these.[87]

Alternatively, ACandS argued that *Walton* requires a set-off equal to the settling tortfeasors pro-rata share, regardless of the terms of the release.[88] In rejecting this argument, the court looked to the case of *Charles v. Giant Eagle*, which *Walton* relied on, and noted the policy in force in the Commonwealth that favors promotion of settlements and avoidance of windfalls to non-settling tortfeasors.[89]

Coupling the policy considerations outlined in *Charles* and *Walton* with the proper interpretation of the UCATA, the court concluded that the terms of a pro tanto release should be enforced regardless of whether liability in a given case is apportioned according to the comparative negligence statute, or in accordance with the pro rata principles of strict liability.[90] Furthermore, the court determined that a non-settling tortfeasor is not entitled to a financial windfall in the form of a release of its joint and several liability to the plaintiff simply because another joint tortfeasor had the foresight to negotiate a settlement which ultimately turned out to be to his or her financial advantage.[91] Any different holding would result in the eradication of the principles of joint and several liability, and constitute a judicial repeal of the provisions of the UCATA.[92]

Editor's Note: Subsequent to the author's preparation of this analysis of the Pennsylvania Superior Court's analysis of *Baker v. ACandS*, the Pennsylvania Supreme Court reviewed the case and issued an opinion affirming the lower court, using an analysis

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86. *Id.* at 1149. *See* Walton v. Avco Corp., 610 A.2d 454 (Pa. 1992). The court in *Walton* concluded that allocations of liability among joint tortfeasors in a strict liability case should not be made on the basis of comparative fault, but should be divided equally between the parties. *Id.* at 462.

87. *Baker*, 729 A.2d at 1149. The court stated they would not read *Walton* so broadly, and the case certainly did not suggest that joint and several liability should be abolished in strict liability cases. *Id.*

88. *Id.* at 1150.

89. *Id. See* Charles v. Giant Eagle, 522 A.2d 1 (Pa. 1987).

90. *Baker*, 729 A.2d at 1151.

91. *Id.*

92. *Id.*

substantially the same as that discussed here. *See* Baker v. ACandS, 755 A.2d 664 (Pa. 2000).