

## **Firm Pulls PBA Membership Over Fair Share Act**

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For the better part of a year, Pennsylvania's plaintiffs bar has made the most noise in the debate over changes to the state's joint and several liability law.

It may turn out, however, that the actions of a Harrisburg-based defense firm will resonate the loudest.

On Wednesday, Thomas Thomas & Hafer rescinded the Pennsylvania Bar Association memberships of 70 of its attorneys because the association has opposed changes to the law.

It had previously been upset with the "slow, but steady, evolution" of the PBA into an organization that it sees as supporting positions more favorable to plaintiffs attorneys.

In a letter to the PBA's newly installed president, Matthew J. Creme Jr., one of the firm's managing partners, James K. Thomas, wrote that nearly the entire firm chose to take the action after the association passed a resolution in opposition to the so-called "Fair Share Act."

That act, House Bill 1 and Senate Bill 2, would change Pennsylvania's doctrine of joint and several liability so that defendants apportioned responsibility for causing a plaintiff's injuries at 60 percent or less would only pay the portion for which they were found liable.

Thomas wrote that he relayed the news with "regret." The firm, according to fellow managing partner Edward H. Jordan Jr., has a long history of involvement with the association. The firm's attorneys have a combined 1,333 years of service to the PBA and many have served in leadership positions.

"My regret is based not on any uncertainty about the justification for these resignations — I have no doubt whatsoever about that — but rather it is motivated by our disappointment in the PBA's failure to fairly represent all lawyers and promote the wealth of the citizens of the Commonwealth of Pennsylvania," Thomas wrote.

He later continued: "We recognize that there may be differences of opinion on such issues. That is acceptable. This is America. But we cannot continue to support an organization that misrepresents our position and uses our dues to undermine it."

Only three Pennsylvania-based attorneys listed on the firm's website — R. Burke McLemore Jr., Gregory W. Walkauskas and Claudia M. Williams — abstained from signing the letter.

The decision grabbed the attention of several in the legal community, including House Majority Leader Mike Turzai, R-Allegheny, who issued a press release on the move.

In it, Turzai said he was "proud" of the attorneys at Thomas Thomas & Hafer and hoped others would follow their lead.

"Until today, I had not realized we had a hostile state bar association as well," Turzai said in the release.

The release continued: "The Fair Share Act is a necessity if we want to improve Pennsylvania's economic and health care climate. Passage of this bill would send a strong message that Pennsylvania will no longer tolerate people who want to abuse the system for their own financial benefit; it restores fairness and balance to Pennsylvania's judicial system."

Creme said the PBA's House of Delegates approved a resolution last week in support of Senate Bill 500 — State Sen. Stewart Greenleaf's (R-Montgomery) proposal to address the issue in a more muted tone — as a balance between the rights of injured plaintiffs and Pennsylvania's businesses.

That, of course, meant opposing House Bill 1 and Senate Bill 2.

"We viewed this as a compromise position," Creme said. "Actually, without comment from anyone — it had already been through several reviews by the membership — the recommendation was adopted by the House as the official policy of the PBA."

Creme took office last week during that meeting.

It was at that meeting that the association's House of Delegates voted to approve a resolution opposing the proposed legislation.

"That was the final straw," Jordan said.

According to Jordan, Thomas, a PBA member, only learned of the association's commitment to the resolution on April 11, when he and PBA Vice President Thomas Wilkinson testified at a Senate Judiciary Committee hearing on the issue in Harrisburg.

"You can only imagine the disappointment Jim experienced," Jordan said. "To only learn that morning that a professional membership organization of which

he'd been a member for many, many years was there to testify in opposite of his position."

No one at the firm — not even those holding leadership positions — had known the PBA was even considering such a resolution, Jordan said.

Many at the firm saw that as a culmination of a slow process where the PBA has begun endorsing views of the trial lawyers involved with the association — a cross-section of attorneys with leadership positions.

And though that was upsetting, it was not enough to warrant the action taken Tuesday. Until the PBA's resolution.

"In particular, we found it to be somewhat disingenuous," Jordan said.

By passing the resolution, Jordan said, the association was representing to outsiders that both plaintiffs and defense attorneys agreed to oppose the proposed legislation.

"Obviously, we have 70 that vehemently disagree," he said. "I think if you informally polled defense lawyers in the PBA, I think you would find that an overwhelming majority of those lawyers disagree with this position. In particular, we know the business law section came out in opposition. That position, in my opinion, was largely ignored in favor of a small group of trial lawyers that have leadership positions in the membership organization."

Creme said the proposed resolution originated in the PBA's civil litigation section and was circulated to several other sections and committees for comment before membership considered presenting it to the house.

The proposed resolution was also published online, in e-mails and in print for membership to see, Creme said.

Jordan said the move was not discussed with PBA members outside the firm.

"We hope that members will follow suit, but this is not something we tried to build a consensus on," Jordan said. "This was something that was very important to us, very important to our clients and very important to our communities."

Robert Byer, a partner at Duane Morris in Pittsburgh and a longtime PBA member, said the action taken by the attorneys at Thomas Thomas & Hafer highlights the dangers of a general bar association taking a stance on an issue that by nature is more political than practice-related.

"I just think it's a mistake," Byer said of the PBA's resolution. "This shows what can happen when you go down that road."

Byer, who previously chaired the PBA's amicus committee, said it was his experience that the association shied away from taking positions on political questions.

Creme disputed that Wednesday.

"We do this all the time," Creme said. "Those members who questioned that this might be different, I'm afraid I don't understand how they think that's different."

"What could be more divisive than the death penalty?" he asked. "We've taken a position long ago in opposition to the death penalty ... The bar association is either going to be silent or we're going to find a way to reach a compromise position on things."

Creme said he did not see the decision, though prompting a strong response from Thomas Thomas & Hafer's attorneys, as being highly "divisive."

More than being concerned with other attorneys following Thomas Thomas & Hafer's lead, Creme said he was concerned with engaging in conversation the attorneys who have already left the PBA.

"I don't know what a possible resolution is, but I think it's incumbent on both the association and Thomas Thomas & Hafer to at least pursue one," Creme said.

In a letter to Thomas on Thursday, Creme wrote that the PBA "does not take lightly a position on any legislation" and that no members of the House of Delegates — "including any member of your law firm" — objected to the resolution.

"In the course of realigning tort law, the PBA proposes that the Legislature should not tip the scales of justice in a fashion that renders it more difficult to collect court awarded damages and should not unduly favor those persons or entities that are responsible for the events that cause serious injury or death or substantial financial loss," Creme wrote.

He later wrote: "I hope you would agree that reasonable minds can and do differ from time to time. However, it is when reasonable minds stop participating in the debate altogether that problems arise." •