

ANSWER KEY

Example #1

- (a) The liability of both settled and non-settling defendants may be submitted to the jury with appropriate proofs. Under Act 17, also, the liability of settling non-parties may now be submitted to the jury upon proper proofs.
- (b) Unless some reasonable basis exists for the apportionment of liability among the strictly liable defendants and non-parties, those found liable will share in the verdict on a pro rata basis.
- (c) Although the liability of bankrupt companies may not be submitted to the trier of fact, settlements received by the plaintiff from the bankrupt estates may be set off by the trial judge against the plaintiff's verdict, reducing the plaintiff's recoverable damages.

Example #2

- (a) Under Act 17, Distributor D's indemnification agreement with Manufacturer C remains enforceable should Distributor D remain in the case at verdict. It may seek indemnification thereafter from the manufacturer for any amount for which it is found liable.
- (b) Yes. Assumption of the risk remains a viable defense to an equipment manufacturer sued in strict liability. The defense, if established by proofs at trial, will be submitted to the jury as an intervening or superseding cause of the plaintiff's injury in their consideration of proximate causation
- (c) No. Under Act 17, an employer's liability or proportionate fault cannot be submitted to the trier of fact, even if the employer was grossly negligent. Evidence of the employer's conduct is admissible, however, to establish an intervening or superseding cause of the injuries sustained by the plaintiff.

Example #3

- (a) Under prior Pennsylvania law, strictly liable defendants – Ford and B.F. Goodrich – are equally liable to plaintiff on a pro rata basis if their products are found defective and unreasonably dangerous under §402 A and are found to be concurrent causes of the plaintiff's injury. Under Act 17, however, strictly liable defendants may now have their liability apportioned among all defendants by the trier of fact if a factual predicate exists for apportionment. As between Ms. Brown and the township, an apportionment of liability may be made under traditional comparative negligence principles.
- (b) Plaintiff Brown's contributory negligence is not a defense to a strict liability claim in Pennsylvania, so her proportion of fault does not serve to reduce the liability of Ford or B.F. Goodrich. Her conduct is admissible, however, in the trier of fact's consideration of the plaintiff's relative fault in contributing to this accident in her negligence claim against the township.

- (c) The issues of product defect and proximate cause should be submitted to the jury through special interrogatories with separate determinations made for each company – Ford and B.F. Goodrich.

The township's negligence and proximate cause determination should also be established by special jury interrogatories.

The jury should then determine the proportion or percentage of fault attributable to Ms. Brown, the plaintiff, for having caused the accident. (If greater than 50% she cannot recover against the township.)

The jury may then determine, as among the remaining defendants, the proportionate fault which each bears for the plaintiff's injury.

The jury may then determine the amount of damages necessary to fairly compensate the plaintiff for her injuries as well as her past, present and future expenses.

The trial court thereafter can apply these findings to mold the verdict to conform to the jury's findings of liability and damages.