

Tort Reform Continues in Texas

Product Liability Advisory

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After two relatively quiet legislative sessions in 2007 and 2009, the Texas Legislature re-entered the tort reform arena in 2011 with a highly publicized form of "loser pays" legislation designed to shift the cost of civil litigation to parties who refuse reasonable settlement offers.

Originally enacted in 2003, the Texas "loser pays" statute set limits on the amount of fees and expenses recoverable. The 2011 legislation raises those limits to equal but not exceed the amount of the judgment. This means a defendant's recoverable costs of defense potentially could offset the full amount of the plaintiff's judgment, leaving the plaintiff with no net recovery.

The legislation also created a form of 12(b)(6) motions to dismiss frivolous suits. Trial courts will now be able to dismiss causes of action that have "no basis in law or fact," relying solely on the motion and without evidence. A court must rule within 45 days after the motion is filed. Under rules to be promulgated by the Texas Supreme Court, the trial court must award attorneys' fees to the prevailing party upon the "granting or denial, in whole or in part" of the motion.

The legislation also revised the method for adding "responsible third parties" for apportioning comparative responsibility. Formerly, if a defendant designated a non-party as a "responsible third party" for purpose of allocating fault, plaintiffs could amend to sue the non-party as a defendant even if limitations had already expired. The 2011 legislation repeals that provision, but now prohibits defendants from designating responsible third parties after limitations have expired if the defendant should have disclosed the identity of that party beforehand.

The legislation also directs the Texas Supreme Court to enact procedural rules for expediting claims less than \$100,000 and authorizes trial courts to certify on their own initiative controlling questions of law for interlocutory appeals.

The new law applies to all lawsuits filed on or after September 1, 2011. It does not apply to suits on file prior to September 1.

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