



TADC *e-Update*
The Texas Association of Defense Counsel, Inc.

LEGISLATIVE UPDATE

May 23, 2011

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TADC's Success in House Continues in Senate

Late Saturday afternoon (Saturday, May 21st) the Senate State Affairs Committee finally approved HB 274, the Governor's reform package. TADC President Keith O'Connell appeared before the committee in support of several changes to the bill as it passed the House. These changes were presented to the Senate State Affairs Committee in a substitute bill that, this week, was the subject of intense negotiations.

As you recall, TADC successfully advocated important changes to HB 274 in the committee process and supported the House substitute for the bill. At the committee hearing in the House, President O'Connell expressed some additional areas of concern in the House bill that needed to be addressed in the Senate. Working with the Senate sponsor of HB 274, Senator Joan Huffman (R-Houston) and Senate State Affairs Chair Bob Duncan (R-Lubbock), TADC recommended six improvements to the bill:

1. elimination of the mandatory cost-shifting in breach of contract cases;
2. restoration of the offset of litigation costs in the offer of settlement, as opposed to a judgment for litigation costs against the claimant that rejected the offer;
3. restoration of the cap on the amount of litigation cost subject to cost shifting;

4. clarification that the no implied cause of action provision does not apply retroactively;
5. modification of the provision for expedited trial procedure to include clear language that the procedure is totally voluntary; and
6. elimination of the mandatory cost-shifting in a motion to dismiss (as developed by the SCOT in rulemaking) or alternatively, the requirement for some egregious conduct before cost shifting could occur (substantially similar to CPRC Ch. 9-10 and TRPC 13);

We are pleased to report that most of TADC's recommendations have been adopted in the [Senate version of HB 274](#). The substitute bill:

1. eliminates the House provision on cost-shifting in breach of contract claims;
2. with regard to the offer of settlement, it restores the litigation cost offset provision and a cap on the amount of litigation costs subject to cost shifting;
3. removes the no implied cause of action provision from the bill in its entirety;
4. retains but modifies SCOT rulemaking for expedited procedures in cases of \$100,000 or less from the House version to require the rules to address the need for lowering discovery costs and moving these cases more efficiently;
5. preserves cost-shifting under a SCOT-promulgated motion to dismiss practice, in the event either party actually invokes a 12(b)(6) or similar motion (as defined by the SCOT);
6. retains the House version of the interlocutory appeal for controlling questions of law (without cost-shifting); and
7. retains the House version of Responsible Third Party (RTP) language in modified form. Under the Senate version, a defendant may not designate an RTP after the applicable statute of limitations has expired with respect to the RTP if the defendant has failed to meet its obligations, if any, to timely disclose that the person may be designated as an RTP;

Needless to say, TADC members played a crucial role in the resolution of this bill, both in the House committee process and in the frenzied Senate negotiations over the past week. The fact that an agreement has been reached among the stakeholders represents a signal achievement for TADC and its

membership, and we hope marks a return to the tradition of negotiating in good faith future changes to the civil justice system.

We would especially like to thank Sen. Joan Huffman (R-Houston) and longtime TADC member and State Affairs Committee Chair Sen. Robert Duncan (R-Lubbock) for welcoming our advice and counsel on this bill. We also commend Rep. Brandon Creighton (R-Conroe) and House Jurisprudence & Civil Practices Chairman Jim Jackson (R-Dallas) for their leadership on the House side. Rep. Tryon Lewis (R-Odessa), Sarah Davis (R-Houston), and Jerry Madden (R-Plano) should also be singled out for their outstanding work on transforming the original version of the bill into a viable and reasonable proposal that could successfully navigate the legislative shoals.

Finally, our friends at the Texas Civil Justice League and TEX-ABOTA, especially David Chamberlain, have worked closely with us this session on this and other pieces of legislation, and we appreciate the spirit of cooperation and compromise that have marked these relationships this session. Clearly, this bodes very well for the future of the Texas civil justice system.

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