

EFFECTIVE USE OF RESPONSIBLE THIRD PARTY

MDJW Fall Seminar

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WHAT IS AN RTP?

- ✘ Chapter 33.011(6) defines a responsible third party as:
 - “ . . .any person who is alleged to have caused or contributed to causing in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these.
- ✘ The term “responsible third party” does not include a seller eligible for indemnity under 82.002.

EXAMPLES OF RTP'S

- ✘ Employer of injured Plaintiff.
 - + Employer with comp has comp bar protection
 - + Prior to RTP – only way to submit an employer was “sole proximate cause”
- ✘ Unidentified criminal in a premises liability claim where a criminal caused the injury.
 - + Specific rules about submitting unidentified criminals
- ✘ Parties that have not been added to the lawsuit that have responsibility for accident or injuries:
 - + Third parties over whom Defendant has no control.

RTP IS NOT A COMPLETE FIX

- ✘ Ch. 33.004(i) The filing or granting of a motion for leave to designate a person as a responsible third party or a finding of fault against the person:
 - + does not by itself impose liability on the person; and
 - + may not be used in any other proceeding, or the basis of res judicata, collateral estoppel, or any other legal theory, to impose liability on the person.

RTP AND STATUTE OF LIMITATIONS – OLD LAW

- ✘ Under the prior version of the law the statute allowed 60 (sixty) days for a Plaintiff to add a party that is designated by a defendant as a responsible third party without regard to statute of limitations as long as the party is sued within 60 days of being designated as a responsible third party.
- ✘ The result a defendant could designate an RTP after limitations had expired allowing a Plaintiff to sue that party
- ✘ The newly added defendant could not assert a statute of limitations defense .

RTP AND STATUTE OF LIMITATIONS – NEW LAW

✘ The September 1, 2011 revisions to the statute provides:

(d) A Defendant may not designate a person as a responsible third party with respect to a claimants cause of action after the applicable limitations period on the cause of action has expired with respect to the responsible third party if the defendant has failed to comply with its obligations, if any, to timely disclose that the person may be designated as a responsible third party under Texas Rules of Civil Procedure.

RTP AND STATUTE OF LIMITATIONS – NEW STATUTE

- ✘ Request for Disclosure Rule requires a party to list any potential parties.
- ✘ Failure to do so precludes a party from designating a party as an RTP if the limitations had expired.
- ✘ If you become aware of a potential RTP in discovery:
 - + List them as an potential party in Requests for Disclosure
 - + Designate them as an RTP

PROCEDURE FOR RTP

- × Ch. 33.004(a)
 - + Must file a motion
 - + Must be filed on or before 60 days before trial
 - + May be filed later if good cause is shown
 - + If timely filed **MUST** be granted unless opposition filed within 15 days after the motion is served.

SUBMITTING THE UNKNOWN CRIMINAL ASSAILANT

- ✘ Fact pattern
 - + Robbery at bank
 - + Customer or Security Guard who works for independent contractor of bank is shot and injured
 - + Assailant escapes and is not caught
 - + Plaintiff sues Bank alleging inadequate security
 - + Bank RTP's the unknown criminal

SUBMITTING THE UNKNOWN CRIMINAL ASSAILANT

- ✘ (j) If, not later than 60 days after the filing of the defendant's original answer, the defendant alleges in an answer filed with the court that an unknown person committed a criminal act that was cause of the loss or injury that is the subject of the lawsuit, the court shall grant a Motion for Leave to designate the unknown person as a responsible third party if:
 - + the court determines that the defendant has pleaded facts sufficient for the court to determine that there is a responsible probability that the act of the unknown person was criminal;
 - + the defendant has stated in the answer all identifying characteristics of the unknown person, known at the time of the answer; and
 - + the allegations satisfy the pleading requirements of the Texas Rules of Civil Procedure.

OBJECTING TO RTP

- ✘ Court shall grant leave to designate unless the objecting party establishes:
 - + Defendant did not plead sufficient facts concerning the alleged responsibility of the person to satisfy pleading requirements of TRCP; AND
 - + After having been granted leave to replead, the defendant failed to plead sufficient facts concerning the alleged responsibility to satisfy the pleading requirements of TRCP

STRIKING A RTP

- ✘ The statute provides that a Plaintiff may strike the designation of a responsible third party if:
- ✘ (l) After adequate time for discovery, a party may move to strike the designation of a responsible third party on the grounds that there is no evidence that the designated person is responsible for any portion of the claimant's alleged injury or damage.
- ✘ The court shall grant the motion to strike unless a defendant produced sufficient evidence to raise a genuine issue of fact regarding the designated person's responsibility for the claimant's injury or damage.

RTP – IT WORKS
