

MDJW presents:

The New Texas Rule 47 Pleading Rules: What Are They and Why Should I Care?

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- What are the new pleading requirements?
- What impact do the new pleading requirements have on insurance litigation?
- Real world examples.



- In 2011, the Texas Legislature passed HB 274 which directed the Supreme Court to establish rules to discourage frivolous litigation and to require expedited jury trials in cases where damages are \$100,000 or less. The Supreme Court published the final rules in 2012, to be effective March 1, 2013, after review by several Supreme Court committees and proposals for implementation of the legislation by various bar groups.



RULE 47. CLAIMS FOR RELIEF

An original pleading which sets forth a claim for relief, whether an original petition, counterclaim, cross-claim, or third party claim, shall contain

- (a) a short statement of the cause of action sufficient to give fair notice of the claim involved;
- (b) a statement that the damages sought are within the jurisdictional limits of the court;
- (c) except in suits governed by the Family Code, a statement that the party seeks:
 - (1) only monetary relief of \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees; or
 - (2) monetary relief of \$100,000 or less and non-monetary relief; or
 - (3) monetary relief over \$100,000 but not more than \$200,000; or
 - (4) monetary relief over \$200,000 but not more than \$1,000,000; or
 - (5) monetary relief over \$1,000,000; and
- (d) a demand for judgment for all the other relief to which the party deems himself entitled.

Relief in the alternative or of several different types may be demanded; provided, further, that upon special exception the court shall require the pleader to amend so as to specify the maximum amount claimed. A party that fails to comply with (c) may not conduct discovery until the party's pleading is amended to comply.



Rule 47 is amended to require a more specific statement of the relief sought by a party. The amendment requires parties to plead into or out of the expedited actions process governed by Rule 169, added to implement section 22.004(h) of the Texas Government Code. Except in a in a suit governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code, a suit in which the original petition contains the statement in paragraph (c)(1) is governed by the expedited actions process. The further specificity in paragraphs (c)(2)-(5) is to provide information regarding the nature of cases filed and does not affect a party's substantive rights.

COMMENT--2013

TX Rules of Civil Procedure, Rule 47



Rule 169. Expedited Actions

(a) *Application.*

(1) The expedited actions process in this rule applies to a suit in which all claimants, other than counter-claimants, affirmatively plead that they seek only monetary relief aggregating \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.

(2) The expedited actions process does not apply to a suit in which a party has filed a claim governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code.

TX Rules of Civil Procedure, Rule 169



(d) *Expedited Actions Process.*

(1) Discovery. Discovery is governed by Rule 190.2.

(2) Trial Setting; Continuances. On any party's request, the court must set the case for a trial date that is within 90 days after the discovery period in Rule 190.2(b)(1) ends. The court may continue the case twice, not to exceed a total of 60 days.

(3) Time Limits for Trial. Each side is allowed no more than eight hours to complete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses, and closing arguments. On motion and a showing of good cause by any party, the court may extend the time limit to no more than twelve hours per side.

(A) The term "side" has the same definition set out in Rule 233.

(B) Time spent on objections, bench conferences, bills of exception, and challenges for cause to a juror under Rule 228 are not included in the time limit

TX Rules of Civil Procedure, Rule 169 (d).

Enter formulas



Discovery in expedited actions is governed by Rule 190.2 (Level 1), which has also been amended to be more restrictive than its former versions.

- The discovery period begins when the suit is filed and continues until 180 days after the date the first request for discovery of any kind is served on a party. Total time for depositions is 6 hours per party, but the parties can agree to increase the total to 10 hours per party. Under the new Level 1 discovery plan, each party is limited to 15 interrogatories, 15 requests for production, and 15 requests for admission.
- In addition to the typical information available through Requests for Disclosures, a party to an expedited action may request disclosure of all documents, electronic information, and tangible items that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses. This request for disclosure is not considered a request for production.



The Supreme Court mandated a maximum allowable recovery for expedited actions. If a suit is subject to Rule 169, no party may recover a judgment in excess of \$ 100,000, excluding post-judgment interest.

Comment 3 to Rule 169 specifically precludes application of the rule from *Greenhalgh v. Service Lloyds Ins. Co.*, 787 S.W.2d 938 (Tex. 1990), which states a "trial court must allow a trial amendment that increases the amount of damages sought in the pleadings to that found by the jury unless the opposing party presented evidence of prejudice or surprise."

The maximum recovery in an expedited action is \$ 100,000, period.



Impact of The New Rules on Insurance Litigation

1. Discovery Issues
2. Removal



A party that fails to comply with (c) may not conduct discovery until the party's pleading is amended to comply.

TX Rules of Civil Procedure, Rule 47



(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between--

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

28 U.S.C.A. § 1332.



Rule 91a MOTIONS TO DISMISS

- Rule 91a of the Texas Rules of Civil Procedure, titled *Dismissal of Baseless Causes of Action*, permits parties to move to dismiss a cause of action on the grounds that it has "no basis in law or fact." The moving party must file the motion within 60 days of the first pleading that contains the challenged cause of action, and the court must grant or deny the motion within 45 days of its filing. In ruling on the motion, the only evidence a court may consider is the pleading containing the contested cause of action and any applicable exhibits. Importantly, the prevailing party is entitled to its attorneys' fees—e.g., if the defendant loses his motion to dismiss, he must pay the plaintiff's attorneys' fees.
- Movants may set the motion for hearing at least 21 days after filing. Parties may withdraw a challenged cause of action within three days of the hearing to prevent the court from ruling on the motion.
- It remains to be seen how new Rule 91a will affect Texas civil trial practice. Although similar, Rule 91a is not an analog of Federal Rule 12(b), both because it includes a true "loser pays" incentive and because the rule expressly limits review to the four corners of the pleading.



Real World Examples



16. Recent Texas Supreme Court decisions limiting deposition times in these types of actions appear to run-afoul of the Federal Rules of Civil Procedure and subject parties to discovery limitations imposed by the Texas Supreme Court when hearing matters are based on state law allegations. *Erie Railroad v. Tompkins*, 304 U.S. 64 (1938). While a federal court is free to certify matters of state law to a state court's Supreme Court, the Texas Supreme Court has already spoken, in that matters involving less than \$100,000.00 (also inclusive of matters in excess of \$75,000.00) are subject to discovery limitations promulgated by a state court.



Q & A

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