

THOUGHT LEADERSHIP

News

PRACTICE TIP: A CURRENT PARTY MAY BE NAMED AS A RESPONSIBLE THIRD PARTY

Newsbrief

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In a federal diversity case governed by Texas state law, Judge Keith Ellison of the Southern District of Texas, Houston Division held last week that Texas Civil Practice & Remedies Code Chapter 33 permits a current party to a lawsuit to be designated as a “responsible third party.” Ordinarily, Chapter 33 is used to designate non-parties for the purpose of allowing the jury to apportion a percentage of fault to the non-party at trial.

In *North Cypress Med. Center Op. Co., Ltd. v. Gallagher Ben. Services, Inc.*, 2013 WL 1736764 (S. D. Tex. April 22, 2013), the plaintiff asserted claims against two defendants. Defendant #1 filed a third-party complaint bringing in a third-party defendant. Defendant #2 then sought to name the third-party defendant as a responsible third party. The third-party defendant argued that since it was already a defendant in the case, it could not be named as a responsible third party under Chapter 33. However, the court concluded that the third-party defendant was not in the position of a defendant with respect to the plaintiff’s claims against Defendant #2. Because proportionate responsibility is considered on a claim-by-claim basis under Texas law, Defendant #2’s action was proper under Chapter 33 and allowed Defendant #2 to ensure the jury had an opportunity to fully apportion responsibility for the plaintiff’s claims against Defendant #2. The corollary to this holding is that one defendant’s third-party petition, by itself, does not necessarily entitle other defendants to jury questions apportioning responsibility to the third-party defendant.