

Proportionate Responsibility

Presented by Andy Payne

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Proportionate Responsibility

- Applicability
- Apportionment Players
- Responsible Third Parties
- 51% Bar
- Joint & Several Rules
- Settlement Credits
- No Double Dipping
- *Drilex* Issues

Applicability

Applicability

- Any DTPA or Cause-of-Action Based in Tort
- Case Filed On or After July 1, 2003
- Does Not Apply to:
 - Exemplary Damage Awards
 - Worker's Compensation Claims
 - Manufacture of Methamphetamine

Apportionment Players

Apportionment Players

- Each Claimant
- Each Defendant
- Each Settling Person
- Each Responsible Third Party
 - With “sufficient evidence to support submission”

Responsible Third Parties

Responsible Third Parties

➤ 1995 Limitations

- “joinder” contemplated
- Court could exercise jurisdiction over (RTP)
- Plaintiff could have, but did not sue (RTP)
- RTP is or maybe liable to Plaintiff
- Not an employer maintaining worker’s comp. ins.
- Not if (RTP) enjoys bankruptcy protection
- Not a seller eligible for indemnity under Chapter 82

Responsible Third Parties

➤ 2003 Limitations Removed

- ~~“joinder” contemplated~~
- ~~Court could exercise jurisdiction over (RTP)~~
- ~~Plaintiff could have, but did not sue (RTP)~~
- ~~RTP is or maybe liable to Plaintiff~~
- ~~Not an employer maintaining worker’s comp. ins.~~
- ~~Not if (RTP) enjoys bankruptcy protection~~
- Not a seller eligible for indemnity under Chapter 82

Responsible Third Parties

- Striking a Responsible Third Party Designation
 - After sufficient time for discovery
 - Move to strike on “no evidence” grounds
 - Defendant must produce sufficient evidence to raise genuine issue of material fact
 - THIS IS A NO EVIDENCE MSJ

Responsible Third Parties

Before 2003 Amendments

P v. D1

D2

- Plaintiff Employer Not Submitted
- Bankrupt Def. Not Submitted
- Foreign Corp. Without “Minimum Contacts” Not Submitted

Verdict

\$1,000,000

P 0 %

D1 45%

D2 55%

Result

D1 pays \$450,000

D2 pays \$550,000

Plaintiff Award \$1,000,000

Responsible Third Parties

P	v.	D1	<u>After 2003 Amendments</u> - Plaintiff Employer Submitted - Foreign Corp. Without “Minimum Contacts” Submitted
		D2	
		RTP1	
		RTP2	

Verdict

\$1,000,000

P 0 %

Result

D1 15%

D1 pays \$150,000

D2 35%

D2 pays \$350,000

RTP1 25%

Plaintiff Award \$500,000

RTP2 25%

51% Bar

51% Bar

P v. D1
D2

Verdict

\$1,000,000

P 50 %

Result

D1 25%

D1 pays \$250,000

D2 25%

D2 pays \$250,000

Plaintiff Award \$500,000

51% Bar

P v. D1
D2

Verdict

\$1,000,000

P 51 %

Result

D1 24%

D1 pays \$ 0

D2 25%

D2 pays \$ 0

Plaintiff Award \$ 0

J & S Liability

J & S Liability

P v. D1 After 2003 Amendments
D2 - Only J & S if > 50%

Verdict

\$1,000,000

P 0 %

Result

D1 51 %

D1 pays \$ 510,000 J&S

D2 49 %

D2 pays \$ 490,000

Plaintiff Award \$ 1,000,000

Settlement Credits & J & S Liability

Settlement Credits

➤ Health Care or Non-Health Care Claims?

Non-Health Care: Settlement Credits

- Filed June 9, 2005 Forward
- Dollar-for-Dollar Credit
- No Percentage Reduction or Sliding Scale
- Defendant's Can Rely on Automatic Credit
- No Election Required

Health Care: Settlement Credits

➤ Defendant Elects Credit Of:

- Dollar-for-Dollar
- Percentage Assigned to Settlor

➤ Election Rules

- Must Elect Before Submission to Jury
- One Election is Binding on All Defendants
- No Election or Conflicting Elections, Then \$ for \$ Applies

Health Care: Settlement Credits

- If You Are J & S Defendant and Elect Percentage:
 - You Will Never Pay More Than Your Percentage
- If You Are J & S Defendant and Elect Dollar-for-Dollar
 - Risk paying more than your percentage if settlement is too low
 - Benefit from paying less than your percentage if the settlement is too high

Dollar-for-Dollar Settlement Credits

P	v.	D1	<u>Recovery Cap</u>	
		D2	- Verdict	1,000,000
		S1 (\$50,000)	- Plaintiffs %	<100,000>
			- \$ for \$ reduction	< 50,000>
			<u>Recovery Cap</u>	\$ 850,000

Verdict

\$1,000,000

			<u>Result</u>	
P		10 %	D1 (J&S) pays	700,000
			D2 pays	150,000
D1		60 %	Plaintiff Award	850,000
D2		15 %	Plus Settlement	50,000
S1		15 %	Total Recovery	\$ 900,000

Dollar-for-Dollar Settlement Credits

P	v.	D1	<u>Recovery Cap</u>	
		D2	- Verdict	1,000,000
		S1 (\$500,000)	- Plaintiffs %	<100,000>
			- \$ for \$ reduction	< 500,000>
			<u>Recovery Cap</u>	\$ 400,000

Verdict

\$1,000,000

			<u>Result</u>	
P		10 %	D1 (60/75ths)	320,000
			D2 (15/75ths)	80,000
D1		60 %	Plaintiff Award	<u>400,000</u>
			Plus Settlement	<u>500,000</u>
D2		15 %	Total Recovery	\$ 900,000
S1		15 %		

Percentage Settlement Credits

P	v.	D1	<u>Recovery Cap</u>	
		D2	- Verdict	1,000,000
		S1 (\$50,000)	- Plaintiffs %	<100,000>
			- % reduction	<150,000>
			<u>Recovery Cap</u>	\$ 750,000
<u>Verdict</u>				
		\$1,000,000	<u>Result</u>	
P		10 %	D1 (J&S) pays	600,000
D1		60 %	D2 pays	<u>150,000</u>
D2		15 %	Plaintiff Award	750,000
S1		15 %	Plus Settlement	<u>50,000</u>
			Total Recovery	\$ 800,000
			Under by	100,000

Percentage Settlement Credits

P	v.	D1	<u>Recovery Cap</u>	
		D2	- Verdict	1,000,000
		S1 (\$500,000)	- Plaintiffs %	<100,000>
			- % reduction	<150,000>
			<u>Recovery Cap</u>	\$ 750,000
<u>Verdict</u>				
		\$1,000,000	<u>Result</u>	
			D1	600,000
P		10 %	D2	<u>150,000</u>
			Plaintiff Award	750,000
D1		60 %	Plus Settlement	<u>500,000</u>
			Total Recovery	\$ 1,250,000
D2		15 %	Over by	350,000
S1		15 %		

No Double Dipping

No Double Dipping: Rejected Arguments

P	v.	D1	<u>(Argument 1)</u>	
			Verdict	1,000,000
		S1 (\$500,000)	X D1 15%	<u>.15</u>
				150,000
			Less Settlement	<u><500,000></u>
<u>Verdict</u>			Plaintiff Award	-0-
		\$1,000,000	<u>(Argument 2)</u>	
P		0 %	Verdict	1,000,000
			Less Settlement	<u><500,000></u>
D1		15 %		500,000
S1		85 %	X D1's 15%	<u>.15</u>
			Plaintiff Award	75,000

No Double Dipping: Correct Calculation

P	v.	D1	<u>Recovery Cap</u>	
			Verdict	1,000,000
		S1 (\$500,000)	Plaintiff %	<0>
			\$ for \$ Settlement	<u>500,000</u>
			Recovery Cap	500,000
<u>Verdict</u>				
		\$1,000,000	<u>Result</u>	
			D1	<u>150,000</u>
P		0 %	Plaintiff Award	150,000
			Plus Settlement	<u>500,000</u>
D1		15 %	Total Recovery	650,000
S1		85 %		

Drilex Issues

Drilex

- All family members seeking recovery for damages arising out of the injury or death of one person are considered a single “claimant.”
- All settlement dollars paid are deducted as a credit against the whole family, even if some family members received no settlement.
- Family members divide the remaining award based on their percentage of the total award.

***Drilex* Creates Problems for Plaintiffs**

- Multiple Plaintiffs, Represented By Multiple Plaintiff's counsel for claims arising from a single injury or death
- One Plaintiff Group settles. This leaves the other group with no benefit from the settlement, but the burden of a credit

Utts Solved the Drilex Problem

- One plaintiff settled, then non-suited claims
- Presumption that all plaintiff' s benefited from the settlement
- Remaining plaintiffs can rebut the presumption and reduce the credit by showing they received no benefit from the settlement

But HB4 Eliminated *Utts* & Codified *Drilex*

- Definition of “claimant” modified to codify the *Drilex* rules.

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