BILL ANALYSIS

Senate Research Center

S.B. 890
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State Affairs
6/2/2005
Enrolled

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Since the 1930s, Texas has recognized that an injured party is entitled to recover only once for an injury. (*Bradshaw v. Baylor*, 126 Tex. 99, 101; 84 S.W.2d 703, 704 (1935)). The "one-satisfaction" rule was codified by the Legislature in Chapter 33, Civil Practice and Remedies Code, in 1987. Subsequent to the 1987 amendments, Chapter 33 allowed a non-settling defendant to elect either a dollar-for-dollar credit for all settlements with the plaintiff, a credit based on the percentage of liability assigned to the parties by the trier of fact, or a statutory sliding scale. H.B. 4, the tort reform measure enacted by the 78th Legislature, Regular Session, 2003, radically changed this scheme. It eliminated the election of the dollar-for-dollar or sliding scale credit, except for those sued for health care liability. Instead, non-settling defendants now receive credit only for that percentage of fault that a trier of fact assigns to a settling person. Thus, if a jury finds no liability for a settling person, the court may not credit any prior settlements against the non-settling defendant's liability.

The settlement credit scheme created by H.B. 4 eliminates the one-satisfaction rule that has been part of Texas law for more than 70 years, except in medical liability cases. This creates the potential for unjust windfalls for plaintiffs, who can now recover far in excess of their total damages. This problem is acute in lawsuits involving multiple defendants. For example, if a plaintiff sues ten defendants for $1 million in damages, and nine defendants settle for $100,000 each, the plaintiff collects $900,000 in settlements. If a jury then finds little or no liability for the settling defendants, the tenth defendant is liable for the full $1 million. The plaintiff thus recovers $1.9 million, despite being awarded only $1 million in damages. This unjustly enriches the plaintiff and penalizes the defendant who went to trial.

Eliminating the dollar-for-dollar credit also creates the potential for collusive settlements. For example, a defendant could agree to settle a claim at trial for less by agreeing with the plaintiff to wait to settle until after all sides have rested their cases. It would then be far too late for non-settling defendants to introduce evidence of the settling defendant's proportionate responsibility. Such collusion not only undermines the purpose of Texas' proportionate responsibility law, which is designed to ensure that parties only pay for their proportionate share of the plaintiff's harm, but it discourages defendants who believe they have little or no liability from trying the lawsuit to a jury. Current law thus undermines the jury system and will vastly increase the cost of litigation, especially in the mass tort arena.

Finally, H.B. 4 created an anomaly in Texas law by retaining the dollar-for-dollar credit in medical liability cases but eliminating it in all others. There is no policy rationale for this distinction. The law as it now stands creates a privileged class of defendants.

S.B. 890 restores the election of the dollar-for-dollar credit, just as in medical liability cases.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 33.012(b), Civil Practice and Remedies Code, to reduce the amount of damages to be recovered by a claimant who has settled with one or more persons.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2005.