

TEXAS LAW★ALERT

Texas Supreme Court Emphasizes the Need to Timely Identify Potential Responsible Third-Parties

The statute allowing a defendant to seek leave to designate responsible third-parties ("RTP") allows a court to allow the designation even after the statute of limitations has expired, but only if the RTP has been timely identified in response to requests for disclosure.

Today the Texas Supreme Court issued its opinion in *In re Dawson* which addressed whether a defendant had diligently and adequately given notice to a plaintiff before limitations expired about potential RTPs, sufficient to allow the defendant to seek leave to designate the third-party after limitations had run. In initial disclosures, served prior to limitations running, the defendant had only indicated that others not parties to the lawsuit may have been responsible for the incident made the basis for suit, and indicated it would supplement that request seeking the identification of responsible third-parties. But in interrogatory responses served with the disclosure responses, defendant identified, by name only, the individual who would eventually be the subject of the RTP motion, filed two weeks after limitations had expired.

The Supreme Court rejected the defendant's contention that the combination of defendant having indicated that other parties were responsible, together with identifying a name in interrogatory answers, met the statute's requirement for timely and adequate notice. The Court opined that timely notice requires that the identification be as soon as practicable, and adequate notice, as specified under the procedural rule, means name, address, and telephone number.

The takeaway from the Court's decision today is that any potential RTP should be identified in initial disclosures or as soon as possible thereafter. Moreover, as there is no penalty for over-identification of potential RTPs, the better course of action is to not limit those to be identified merely to *probable* RTPs, but *possible* RTPs

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