SUBJECT: Judicial discretion to dismiss cases on forum non conveniens grounds

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 6 ayes — Nixon, Rose, P. King, Madden, Strama, Woolley

3 nays — Martinez Fischer, Raymond, Talton

WITNESSES: For — Victor Alcorta, Georgia Pacific Corporation; Kay Andrews, Texas Civil Justice League; Jaime Capelo, Texas Alliance for Patient Access; Barbara Douglas, Lumbermens Association of Texas; Bo Gilbert, Independent Insurance Agents of Texas; Kinnan Golemon, Shell Oil Company, Texas Chemical Council, ACIT; Steve Hazlewood, The Dow Chemical Company; Robert S. Howden, Texas Asbestos Consumers Coalition, Texas Civil Justice League; John Marlow, American Insurance Association; Cindy McCauley, Lyondell Chemical Company; Mike Meroney, Huntsman Corporation; Julie W. Moore, Occidental Petroleum Corporation; Cindy Morphew, Texas Oil and Gas Association; Lee Parsley, Texans for Lawsuit Reform; Bill Ratliff, Texas Civil Justice League; Lucinda Dean Saxon, Texas Association of Business; Tom Sellers, Conoco Phillips; Linda Sickels, Trinity Ind. Inc.; Edward Slaughter, Texas Civil Justice League; Sara Tays, Exxon Mobil Corporation; Richard J. Trabulsi, Jr., Texans for Lawsuit Reform

Against — Guy Choate, Texas Trial Lawyers Association; Charles Siegel, Texas Trial Lawyers Association

BACKGROUND: The doctrine of forum non conveniens allows a judge to dismiss a case if the judge concludes it would be in the best interests both of justice and of the convenience of the parties if the case were brought in a place other than Texas. Forum non conveniens most frequently is used when a case involves parties that live or injuries that occurred outside of Texas.

Until 1990, Texas courts used the doctrine of forum non conveniens (Latin for "inconvenient court") to dismiss lawsuits with little connection to Texas. In 1990, however, the Texas Supreme Court in *Dow Chemical v. Alfaro*, 786 S.W.2d 674, ruled that the Texas Legislature in 1913 statutorily had abolished the forum non conveniens doctrine for wrongful death and personal injury actions.

To reinstitute the doctrine in cases involving personal injury or death, the Legislature in 1993 enacted SB 2, which was codified in Civil Practice and Remedies Code, sec. 71.051. This section has been amended several times, most recently in 2003, to limit the grounds for which a court cannot dismiss a suit on grounds of forum non conveniens.

The current state of the doctrine in Texas prevents a forum non conveniens dismissal in only two circumstances: under sec. 71.051(e), when one of the plaintiffs is a Texas resident, and under sec. 71.051(f), when an act or omission that was a proximate or producing cause of the injury occurred in Texas. Otherwise, in determining whether to grant a motion to stay or dismiss an action, the court may consider six factors, found in sec. 71.051(b):

- an alternative forum exists in which the claim or action may be tried;
- the alternative forum provides an adequate remedy;
- maintenance of the claim or action in the courts of this state would work a substantial injustice to the party moving for a stay or dismissal;
- the alternate forum can exercise jurisdiction over all defendants' property joined to the defendant's claim;
- the balance of private interests of the parties and the public interest of the state favor the claim or action being brought in an alternate forum; and
- the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

DIGEST:

CSHB 755 would repeal sect.71.051(f), which prevents a judge from dismissing a case on the grounds of forum non conveniens when an out-of-state plaintiff shows that an act or omission that was a proximate or producing cause of the plaintiff's injury or death occurred in Texas.

It would add a provision similar to the one deleted as one of the factors in sec. 71.051(b) that a judge may consider in deciding whether to stay or dismiss a case on forum non conveniens grounds. In determining whether the parties' private interests and the interest of the state favored bringing the action in a court other than in Texas, a judge also could consider the

extent to which an injury or death resulted from acts or omissions that

occurred in Texas.

The bill would apply only to actions filed on or after the September 1, 2005, effective date.

SUPPORTERS SAY:

CSHB 755 would give judges more discretion in deciding whether to dismiss a case if an act or omission that resulted in the injury or death of an out-of-state plaintiff occurred in Texas. It would maintain the absolute protection against a forum non conveniens dismissal when one of the plaintiffs was a Texas resident, the most appropriate reason for preventing dismissal.

Sec. 71.051(f), which requires Texas courts to retain cases if an act or omission that was a proximate or producing cause of an injury or death occurred in Texas, too broadly allows plaintiffs from outside of the state who were not injured in Texas to sue in Texas courts. The result is that Texas courts have a large backlog of cases involving out-of-state plaintiffs, and the state is footing the bill for cases with no logical connection to the state. This creates a burden for those serving on juries and creates costs to taxpayers.

The mandatory character of subsec. (f) prevents judges from exercising discretion in a large number of cases and forces them to hear too many cases with little connection to Texas. Allowing greater judicial discretion to dismiss a case on the grounds of forum non conveniens would ensure that only cases with a legitimate connection to the state could be heard here. Repealing subsec. (f) would not prevent out-of-state plaintiffs from bringing cases in Texas, but would give the judge discretion to decide, based on several factors, whether Texas is the appropriate forum.

CSHB 755 would bring the state more closely in line with the federal approach to forum non conveniens, a standard followed by most other states. Allowing judges this discretion also would decrease dramatically the number of such cases brought in Texas and would help ease backlogs. This would benefit Texas plaintiffs who have been injured because their cases would go to trial more quickly.

OPPONENTS SAY:

CSHB 755 unnecessarily would burden plaintiffs who have been injured by a product that was produced in Texas. The bill would continue the process of eroding the rights of those injured to seek redress in a Texas court by giving judges too much discretion in deciding whether a

particular case should be dismissed based on forum non conveniens. In the interest of justice, plaintiffs injured by an act or omission that occurred in Texas should have the right to have Texas courts hear their suit.

Whether the proximate or producing cause of the injury or death occurred in Texas would change from being a ground for forbidding a forum non conveniens dismissal to being only one of several factors merely to be considered in deciding whether to order such a dismissal. CSHB 755 would not even mandate that a judge consider this and the other factors in sec. 71.051(b), but would continue to say only that a judge *may* consider these factors. This broad discretion would result in confusion across the state with judges ruling in different ways in similar cases.

Finally, it is in the best interests of Texas defendants to defend suits against them in this state. CSHB 755 would create a system wherein any defendant in a group of defendants in a case could bring a motion to dismiss on the grounds of forum non conveniens and, if the motion were granted, the Texas resident would be forced to defend his portion of the case outside the state. This inevitably would cost the Texas defendant more money than would defending the case in Texas. Thus, out-of-state defendants would benefit from this bill while in-state defendants and many plaintiffs would suffer.

NOTES:

HB 755 as filed only would have repealed sec. 71.051(f), which bars forum non conveniens dismissal when a case involves an act or omission that occurred in Texas and was a proximate or producing cause of the plaintiff's injury or death. The committee substitute added a similar ground to the factors a judge could consider in deciding whether to dismiss.

SB 294 by Duncan, the companion to HB 755, was reported favorably, as substituted, by the Senate State Affairs Committee on March 9. CSSB 294 differs in three ways from CSHB 755:

First, CSSB 294 would require rather than permit a judge to consider the list of six factors in sec. 71.051(b) when deciding whether a case should be dismissed on the grounds of forum non conveniens.

Second, CSSB 294 would add under subsec. (b) that the judge would have to consider the extent to which an injury or death resulted from an act or

omission that occurred in Texas. CSHB 755 would make consideration of this factor discretionary.

Finally, CSSB 294 would require a judge who stayed or dismissed a case on the grounds of forum non conveniens to specify the factual and legal grounds for the decision.

Rep. Gattis intends to offer a floor amendment to CSHB 755 that would make the bill identical to CSSB 294.