

SUBJECT: Making forum non conveniens determinations independent of co-plaintiffs

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Smithee, Clardy, Laubenberg, Schofield, Sheets

4 nays — Farrar, Hernandez, Raymond, S. Thompson

WITNESSES: For — Michael Eady, Doug Lampe, and Jaime Saenz, Ford Motor Company; George Christian, Texas Civil League; (*Registered, but did not testify*: John Marlow, ACE Group; Jay Thompson, AFACT; Michael Chatron, AGC Texas Building Branch; Myra Leo, Alliance of Automobile Manufacturers, GlaxoSmithKline (GSK); Jon Fisher, Associated Builders and Contractors of Texas; Lindsay Mullins, BNSF Railway; Steve Perry, Chevron USA; Tom Sellers, ConocoPhillips; Diane Davis, East Texans Against Lawsuit Abuse; Samantha Omev, ExxonMobil; Misti Rice, Fiat Chrysler Automobiles; Mike Meroney, Huntsman Corp., Sherwin Alumina, Co.; Bill Oswald, Koch Companies; Paul Martin, National Association of Mutual Insurance Companies; David Holt, Permian Basin Petroleum Association; Joe Woods, Property Casualty Insurers Association of America; Julian Alvarez, Rio Grande Valley Citizens Against Lawsuit Abuse; Mike Hull, Texans for Lawsuit Reform; John Sepehri, Texas Apartment Association; Amanda Martin, Texas Association of Business; Michele Smith, Texas Association of Defense Counsel; Hector Rivero, Texas Chemical Council; Lisa Kaufman, Texas Civil Justice League; Lindsey Miller, Texas Independent Producers and Royalty Owners Association; Shannon Rusing, Texas Oil and Gas Association; John W. Fainter, Jr., the Association of Electric Companies of Texas, Inc.; Daniel Womack, the Dow Chemical Company; Tanya Vazquez, Toyota Motor North America; Stephanie Simpson, TX Association of Manufacturers; Julie Klumpy, Valero; Dawn Buckingham; Dennis Kearns)

Against — Laura Tamez, TTLA; (*Registered, but did not testify*: Celina Moreno, MALDEF; Jason Byrd, Texas Association of Consumer Lawyers; Maxie Gallardo, Workers Defense Project)

**BACKGROUND:** Civil Practice and Remedies Code, sec. 71.051 lays out the doctrine of forum non conveniens, which states that if a Texas court finds that in the interest of justice and for the convenience of the parties a claim or action would be more properly heard in a forum outside the state, the court must decline to exercise jurisdiction and either stay or dismiss the action. In determining whether to grant a motion to stay or dismiss, a court must consider whether:

- an alternate forum exists where the claim may be tried;
- the alternate forum provides an adequate remedy;
- keeping the case in Texas courts would create a substantial injustice to the moving party;
- the alternate forum can exercise jurisdiction over all the defendants;
- the balance the interests of the parties and public interest of the state weigh toward the claim being brought in an alternate forum, including whether the acts or omissions giving rise to the suit occurred in the state; and
- the stay or dismissal would result in unreasonable duplication or proliferation of litigation.

The court cannot stay or dismiss a plaintiff's claim if the plaintiff is a legal resident of this state. If a suit involves both residents and non-residents of this state, and the resident plaintiffs are properly joined and the action arose out of a single occurrence, the court cannot stay or dismiss the action unless the court finds that a party was joined solely for the purpose of obtaining or maintaining jurisdiction in the state.

Under sec. 71.051, "legal resident" means an individual who, in good faith, intends the specified political subdivision to be his permanent residence and who intends to return despite temporary residence elsewhere or despite temporary absences, without regard to the individual's country of citizenship or national origin.

Under sec. 71.051, "plaintiff" includes a party who seeks recovery of

damages for personal injury to or the wrongful death of another person.

Under current law, non-resident litigants often attempt to improperly gain access to Texas courts, clogging the court system and making access to the courts more difficult for Texans.

**DIGEST:**

CSHB 1692 would require the court to determine whether plaintiffs' claims could be stayed or dismissed under forum non conveniens on an individual basis, without regard for other plaintiffs, and without regard to a plaintiff's country of citizenship or national origin.

If an action involved both resident and non-resident plaintiffs, the court would consider the forum non conveniens factors to determine whether to dismiss the claims of non-resident plaintiffs.

The bill also would eliminate the definition of "legal resident" in the forum non conveniens statute and would change the definition of plaintiff to exclude representatives, administrators, guardians, or next friends of the parties seeking recovery of damages for personal injury or wrongful death.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015, and would apply to actions commenced on or after the effective date.