



Texas Supreme Court Lets Employers Shift Fault To Third Parties In Worker Injury Suits: Key Takeaways For Workers' Comp Nonsubscribers

Insights

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Texas employers that opt out of the state's workers' compensation program recently received a big win that will impact litigation strategies. While workers' comp provides a no-fault system, employers that elect not to participate may face costly negligence lawsuits when employees sustain work-related injuries. But what if a third party is at fault for the injury? The Texas Supreme Court ruled on April 25 that a non-subscribing employer can potentially shift some or all of the fault to responsible third parties and thereby reduce its liability. What do Texas employers need to know about this ruling, and how will it impact your legal defense?

Quick Explainer On Texas Law

- **No-Fault System:** The Texas Workers' Compensation Act (TWCA) provides for a no-fault insurance system that applies when employees sustain work-related injuries or illnesses. Employees generally receive medical and income benefits while employers receive immunity from related lawsuits.
- **Exclusive Remedy:** When a Texas employer opts to carry workers' compensation insurance, the workers' comp system is typically the exclusive remedy for covered injuries or illnesses, and their employees cannot sue them in court.
- **Nonsubscriber Status:** Texas law is unique because employers can opt out of the workers' compensation system, or non-subscribe, and choose not to carry related insurance. As a tradeoff, nonsubscriber employers lose access to several common defenses in negligence claims, including the ability to argue that **the employee** was guilty of contributory negligence or assumed the risk, or that the injury was caused by the negligence of another employee. In ordinary negligence cases, these defenses can reduce or eliminate an injured plaintiff's recovery.
- **Proportionate-Responsibility Statute:** This Texas law allows defendants to name **third parties** to share a percentage of fault, thereby reducing the employer's overall liability for damages to only its own percentage of responsibility.

What Happened In This Case?

Let's look at how this played out in the recent real-world case of *In Re: East Texas Medical Center Athens* and consider why it should matter to you.

Review and consider any relevant matter to you.

- **Injury At Work:** Sharon Dunn was an emergency department nurse at a medical center in East Texas. She claimed her back was seriously injured when a third-party EMT hit her with a stretcher while on the job.
- **Negligence Claim:** Since the medical center was a nonsubscriber, Dunn sued it for ordinary negligence. She claimed the medical center failed to provide a safe work environment, which ultimately resulted in her injuries.
- **Designating Responsible Third Parties:** Although Dunn initially sued the EMT and his employer, her claims against them were dismissed because she didn't timely file a required expert report under the Texas Medical Liability Act. When Dunn then filed her negligence claim against her own employer, the medical center sought to designate the EMT and his employer as "responsible third parties" to shift fault under the Texas proportionate-responsibility statute.
- **Workers' Comp Exemption:** The state's proportionate-responsibility statute does not apply to workers' comp claims. Based on this exception, Dunn asked the court to strike the "responsible third parties" designation for the EMT and his employer, arguing her lawsuit met the statutory definition of a workers' compensation claim, and so, the proportionate-responsibility statute did not apply.
- **What's At Stake?:** A designated responsible third party is not a party to the action and incurs no liability even if found responsible for causing the harm. Dunn wanted to collect the full damages from her employer, but if a jury found that the fault should be shared with the EMT and his employer, it would reduce what she could recover from the medical center.
- **Outcome:** The trial court agreed with Dunn, but the Texas Supreme Court ultimately reversed course, providing clarity and a win for the non-subscribing employer. The state's high court essentially said a negligence lawsuit against a nonsubscriber is not a workers' comp claim, so the workers' compensation exemption in the proportionate liability statute does not apply. Therefore, the medical center could ask a jury to assign a percentage of the fault to the EMT and his employer with the goal of reducing its overall liability.

Key Takeaways From Texas Supreme Court Ruling

The Texas Supreme Court made the following three key findings:

- **Scope:** The proportionate-responsibility statute applies because an employee's negligence claim against a non-subscribing employer is not "an action to collect workers' compensation benefits under" the TWCA.
- **Employer Rights:** The TWCA does not prohibit non-subscribing employers from designating responsible third parties. A non-subscribing employer is still barred from asserting the employee's contributory negligence, the employee's assumption of the risk, or a fellow employee's negligence – but the TWCA does not preclude apportionment generally as to third parties.

- **Sufficient Evidence:** The record in this case contains sufficient evidence of the third parties' responsibility. Notably, Dunn's own testimony and a coworker's testimony about the EMT's duties, breach, and causation created a fact issue as to whether the EMT and his employer were responsible for her injuries (though the EMT denied wrongdoing).

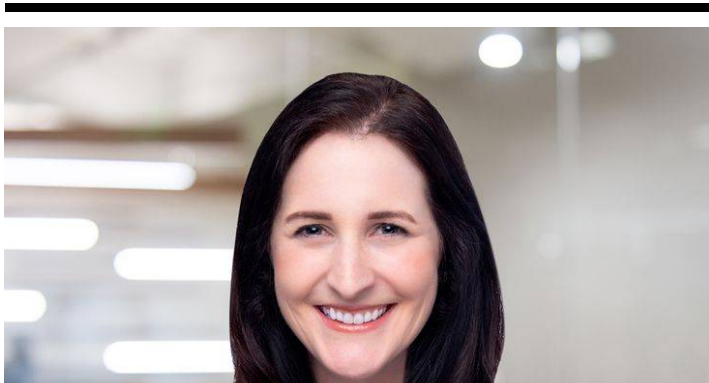
What Does This Mean For Employers?

- As a result of the Texas Supreme Court's decision, nonsubscriber employers may have a **stronger defense strategy**.
- Nonsubscribers may be able to **reduce their liability by designating third parties** under the proportionate-responsibility statute and **asking the jury to assign fault percentages**. In a broader sense, the case highlights the importance of **proper incident reporting, investigation, and documentation**. Be sure to coordinate with legal counsel to review and potentially revise safety, training, and reporting policies.
- The Texas Supreme Court's ruling may lead some employers that carry workers' compensation insurance and are on the fence to reconsider nonsubscriber status. Before opting out of the workers' comp system, an employer should **conduct a feasibility study** to consider the potential benefit to the company and to its employees.
- To ensure that injured employees receive the care needed, and to avoid catastrophic financial loss, **many nonsubscribers create a self-funded occupational injury benefits plan**. Employers considering nonsubscriber status should take this into consideration as well.
- As a best practice, involve legal counsel early when incidents or claims arise. If applicable, **work with your attorney to file a timely motion** for leave to designate a responsible third party and devise an overall litigation action plan.

Conclusion

We'll continue to monitor developments and provide the most up-to-date information directly to your inbox, so make sure you are subscribed to [Fisher Phillips' Insight System](#). If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, any attorney in [our Texas offices](#).

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