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Medium Claims Court: Strategies and Tactics to Win with the Texas Expedited Action Rules

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I. What Is an "Expedited Action"?

Texas's Expedited Action rules essentially provide a plaintiff with the opportunity to plead a cap on her damages, which triggers several mandatory procedures. Most of these procedures create limits – in particular limits on damages, the length and breadth of discovery, expert challenges, trial settings, continuances, and trial time. As explained more fully below, an Expedited Action (hereafter, "EA") could theoretically be tried in a two to three day trial within just nine months of filing, provided the court's docket can accommodate the trial setting.

The history of how the EA procedures came about is well-documented. *See*, *e.g.*, Michael Morrison, James Wren, & Chris Galeczka, *Expedited Actions in Texas & the U.S.: A Survey of State Procedures and A Guide to Implementing Texas's New Expedited Actions Process*, 65 Baylor L. Rev. 824 (2013).[1] The refrain is all too familiar: litigation takes too long and is too expensive. As a result, the Texas Legislature amended the Government Code requiring the Supreme Court of Texas to adopt rules to resolve civil actions more promptly, efficiently, and cost-effectively. Tex. Gov't Code § 22.004(h) (West Supp. 2012). The Court acted on this mandate by creating Texas Rule of Civil Procedure 169, the main procedural rule, and amending Rules 47 (pleading), 78a (civil case information sheet), and 190 (discovery). The net effect of these rules is to allow a plaintiff to affirmatively plead a cap on the type and amount of her damages in return for a streamlined process that, ostensibly, will reduce the costs and time of litigating cases with damages that lie somewhere between small claims and large-damages lawsuits.

II. When Do the EA Procedures Apply?

The EA procedures are both mandatory and automatic. A plaintiff triggers the EA procedures when she pleads that she seeks "only monetary relief of $100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees" under Texas Rule of Civil Procedure 47(c)(1). *See also* Tex. R. Civ. P. 169(a)(1) (explaining that the EA process applies when a claimant pleads in accordance with Tex. R. Civ. P. 47(c)(1)). The EA procedures apply in civil actions in a number of courts; they apply "in district courts, county courts, county courts at law, and statutory probate courts." Tex. Gov't Code § 22.004(f) (West Supp. 2012). Some categories of cases, however, are exempt from the EA process. The EA rules do not apply to cases governed by the Family Code, Property Code, Tax Code, or Chapter 74 of the Civil Practice and Remedies Code (health care liability claims).

III. What Limitations Do the EA Procedures Create?

Texas's expedited action procedures affect virtually every aspect of a case, from pleading through judgment. Most, though not all, of the EA provisions are limitations.

[1] I especially thank my friend and colleague Professor Jim Wren and his co-authors, Professors Mike Morrison and Chris Galeczka for allowing me to use their excellent survey on expedited actions as a jumping-off point for this presentation. Any errors or omissions are mine alone.

A. Pleading.

As described above, the plaintiff must now plead her case into one of the five categories of relief in Texas Rule of Civil Procedure 47(c). Additionally, the civil case information sheet that must accompany every newly-filed petition must include the category of damages pled under Rule 47. *See* Tex. R. Civ. P. 78a.

B. Discovery.

The EA process has an extensive effect on the entire discovery process. In fact, until the plaintiff pleads the maximum amount of her damages requested, the plaintiff may not conduct discovery. *Id.* 47. One discovery commences, the discovery period is a mere 180 days, beginning on the date the first request for discovery is served on a party. *Id.* 190.2(b)(1). If a plaintiff serves a request for disclosure with the original petition (as she routinely should in EA cases), the roughly six-month discovery clock starts ticking as soon as the defendant is served. This short fuse may have been lit even before the defendant answers. *See id.* 99(b)

The types and extent of discovery are also more limited, with one important exception. Each party is limited to just six hours of oral deposition time, which can be expanded by agreement up to ten hours, unless the parties obtain leave of the court. *Id.* 190.2(b)(1). Each party is also limited to: (1) fifteen interrogatories, excluding those asking only to identify or authenticate documents; (2) fifteen written requests for production; (3) and fifteen written requests for admissions. *Id.* 190.2(b)(2)-(6).

The one exception that is not properly characterized as a limitation is the new mandatory disclosure requirement. Upon request, a party must disclose "all documents, electronic information, and tangible items that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses." *Id.* 190.2(b)(6). This language is very similar Federal Rule of Civil Procedure 26(a)(1)(A)(ii) with one important distinction. The Texas rule requires the disclosing party to actually produce the responsive documents rather than giving the disclosing party the option to merely provide a description of such documents. *Compare* Fed. R. Civ. P. 26(a)(1)(A)(ii) *with* Tex. R. Civ. P. 190.2(b)(6). This "disclosure request" does not count against the fifteen requests for production limitation. Tex. R. Civ. P. 190.2(b)(6) (permitting this disclosure request "addition to the content subject to disclosure under Rule 194.2 [the disclosure rule]"). This labeling also suggests that the remainder of Texas Rule of Civil Procedure 194 applies, eliminating any claim work product. *Id.* 194.5 ("No objection or assertion of work product is permitted to a request under this rule.").

The EA process does not alter the stated time periods for designation of experts provided by Texas Rule of Civil Procedure 195. While the rules modify the discovery period, limiting it to a mere 180 days from the date of the first discovery request, the rules do not modify the expert disclosure rules. Rule 195.2(a)-(b) provides that experts must be disclosed "with regard to all experts testifying for a party seeking affirmative relief, 90 days before the end of the discovery period; with regard to all other experts, 60 days before the end of the discovery period." Under the expedited rules, that means Plaintiff has less than three months from the first discovery request to designate experts, and defendants get four months. And as described below, one of the only challenges allowed under the expedited rules is a challenge for late designation. Because the discovery period expires 180 days after the first discovery request is served, the plaintiff's expert

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