

Storming the *Casteel*: Reflections on 20 Years of Presumed Harm

Hon. Tom Phillips
Baker Botts LLP

David Gunn
Beck Redden LLP

Russell Post
Beck Redden LLP

Delaney McMullan
Baker Botts LLP

1

1

The Rotten Apple
Problem, a/k/a
“*Casteel* error” –
really “*Casteel*
harm”



2

2

Crown Life Ins. Co. v. Casteel, 22 S.W.3d 378 (Tex. 2000)

- Single liability question combined 13 “theories” under the DTPA and Article 21.21
- 4 of the 13 liability “theories” required consumer status, which was not met
- Was inclusion in a broad-form question harmless?

The actual question in *Casteel*

... with subparts (a) – (d) being rooted in the DTPA and therefore requiring consumer status

QUESTION Q. 16:

Did Crown Life engage in any unfair or deceptive act or practice in the business of insurance that was a producing cause of damages to Casteel?

“Unfair or Deceptive Act or Practice in the Business of Insurance” means any of the following:

- Representing that the insurance policies had characteristics, uses, benefits and quantities which they did not have.
- Representing that the insurance policies were of a particular standard, quality or grade if they were of another.
- Advertising insurance policies with intent not to sell them as advertised.
- Representing that agreements conferred or involved rights, remedies or obligations which they did not have or involve.
- Failing to disclose information concerning an insurance policy which was known at the time of the transaction with the intention to induce another into a transaction.
- Making, issuing, circulating and causing to be made, issued and circulated, estimates, illustrations, circulars and statements misrepresenting the terms of insurance policies issued or to be issued, and the benefits or advantages promised thereby and the dividends or share of the surplus to be received thereon.

The actual question in *Casteel*

- l. Implying in an advertisement that the payment or amount of dividends is guaranteed.
- m. ~~Implying that illustrated dividends will be or can be sufficient at any future time to assure without the future payment of premiums the receipt of benefits such as a paid-up policy without clearly and precisely explaining the benefits or coverage provided at such time and the conditions required for that to occur.~~
- n. Using advertisements, which: because of material information omitted therefrom have the capacity and tendency to mislead or deceive purchasers or prospective purchasers.

Answer "Yes" or "No."

ANSWER: YES

5

5

Casteel

Harmless to include flawed theories in the question?
No.

“To hold this error harmless would allow a defendant to be held liable without a judicial determination that a factfinder actually found that the defendant should be held liable on proper, legal grounds.”

6

6

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