

The Future of Class Action Litigation After House Bill 4

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Texas Historically Favorable to Class Action Litigation

- In 1980s and 1990s many Texas judges known for treating "certification of putative classes as simple pre-trial procedural speed bumps" Russell T. Brown, *Class Dismissed: The Conservative Class Action Revolution of the Texas Supreme Court*, 32 St. Mary's L.J. 449, 453 (2001).
- Many courts adopted the "certify now, worry later" approach to class certification



Supreme Court Imposes Stricter Limitations

- In the last two years, responding to widespread alleged Supreme Court issues four opinions imposing stricter limitations on class certification



- *Intratex Gas Co. v. Beeson*, 22 S.W.3d 398 (Tex. 2000)
- *Southwestern Refining Co. v. Bernal*, 22 S.W.3d 425 (Tex. 2000)
- *Ford Motor Co. v. Sheldon*, 22 S.W.3d 444 (Tex. 2000)
- *Henry Schein, Inc. v. Stromboe*, 102 S.W.3d 675 (Tex. 2002).

Why Does Certification Matter ?



"[Class] certification dramatically affects the stakes for defendants. Class certification magnifies and strengthens the number of unmeritorious claims. Aggregation of claims also makes it more likely that a defendant will be found liable and results in significantly higher damage awards . . . [Class certification creates insurmountable pressure on defendants to settle, whereas individual trials would not. The risk of facing an all-or-nothing verdict presents too high a risk, even when the probability of an adverse judgment is low."

Castano v. The Am. Tobacco Co., 84 F.3d 734, 746 (5th Cir. 1996).

Texas Legislature Institutes Class Action Reform - House Bill 4

- Texas Legislature has now carried the Supreme Court's class action reform movement even further citing,
 "unreasonable pressure to settle defensible claims and other procedural aspects of our current court system that are patently unbalanced"
- Legislature determines that the Supreme Court was not "tough enough" on class actions.

See C.S.H.B. 4 Civil Practices Committee Report, available at <http://www.capitol.state.tx.us>.

House Bill 4's Four Changes to Class Action

1. Exclusive or primary jurisdiction of state agencies is a threshold issue to be considered before class certification
2. Texas Supreme Court now has jurisdiction over all interlocutory appeals from trial court rulings on class certification
3. All proceedings in the trial court are not subject to an automatic stay pending resolution of an interlocutory appeal from a class certification decision
4. New guidelines for calculation of attorney's fees

Exclusive or Primary Jurisdiction of State Agencies Threshold Issue to Be Considered

- Intent of section -
"require putative class representatives to exhaust their administrative remedies before an appropriate state agency before pursuing their claims as a class action in court"



