

BRADIE, BRADIE & BRADIE

ATTORNEYS AT LAW

Wills * Probate * Business Law

Happy Anniversary!

March 2011

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We Are Celebrating Our 20th Anniversary!

On April 1, 1991, we formed Bradie, Bradie & Bradie. Boy, it sure does not seem like 20 years ago. Time truly does fly when you are having fun.

I was so blessed with the opportunity to leave a downtown Houston law firm 20 years ago and go into practice with my father and mother. It has been such a pleasure to carry on what is now a 3rd generation tradition, since both my grandfathers were attorneys as well.

Thank you to all of our clients and friends for making our firm a success over

these last twenty years, and we hope and pray that the next twenty years will be as much fun!

Cordially,

Michell S. Bradie
Bradie, Bradie & Bradie

NEWS YOU CAN USE

Beware! You May Lose Your Right To Trial!



Sometimes what seems like a good idea, or seems "fair" when quickly looked at can have far reaching and unintended consequence. There is some proposed legislation in Texas under House Bill No. 274 that could have a substantial impact on your right to even have a trial. Let me explain further.

What this proposed House Bill does is say that if you file suit in a case, and you lose, that you will be required to pay the other side's attorney's fees, litigation costs, travel expenses and expert witness fees. It also says that if the attorney that is representing you is handling the matter on a contingency fee basis, that the attorney may also be responsible for paying the other side's attorney's fees, litigation costs, travel expenses and expert witness fees too.

As a small business owner myself, I am certainly sympathetic to a business that is sued, and even if they win their case, they have incurred attorney's fees defending themselves. So without any additional consideration, it would seem "fair" that if you win your case, the other side should pay your costs, right?

However, you need to think about it a little deeper. Let's pretend that you were injured or that someone owed you money for some work you did for them and they didn't pay you. Let's also pretend that you sued them, and for some reason a judge or jury ruled against you (which can happen even if you are 100% right). It could

cause you financial ruin. You may have to pay not just the other side's attorneys fees, but all those other additional costs of litigation, like expert witness fees.

There are already laws to punish folks that file frivolous law suits. Just because you lose doesn't mean it is frivolous, and should cause you financial ruin.

How many people would file suit against a major car company for defects in the vehicles that may have killed their loved one knowing that if they lost the case, potentially millions of dollars would be owed by them to the car companies? Not many, I bet.

But it goes further than that. Most folks I know don't have the money to pay an attorney their hourly rate in a personal injury case. If they are injured, they are probably hard pressed to just pay their bills. So for that reason, some attorneys will take on cases on a "*contingency fee*" basis, meaning that if they don't win and collect, their client owes them nothing. The attorney's fee, if any, are taken from the collection alone, so it all depends on the outcome of the case.

You also see this a lot with small businesses. Many businesses hire attorneys to handle their collections on a contingency fee basis, because they can't afford to pay the attorney straight time to sue the business that didn't pay them, especially when there is a chance they may not be able to collect on a judgment if one is taken.

In this proposed legislation, if the attorney has a "financial interest" in the matter (meaning that they have a contingency fee or a fee based on the case's outcome), then the attorney may also become liable to pay the other side's fees if they lose. So what do you think that will do? If the attorney doesn't want to expose themselves to liability also, the only way to do that is refuse to handle **any** matter on a contingency fee basis.

If attorneys stopped handling cases on a contingency fee basis, and would only take straight time payments to handle a lawsuit, then only the very wealthy would be able to afford to bring law suits. You may have a right to bring a case to trial under the Constitution, but financially would never be able to exercise that right.

The proposed bill takes it even a step farther. Let's say that if you win, and the other side loses. If your attorney is handling the matter on a contingency fee agreement with you, then that fee agreement for legal services *may not be considered* in the determination of the amount of reasonable and necessary attorney's fees. If your attorney can't get paid, how many cases do you think they can take on?

In personal injury matters, or those arising out of Tort Law, the defendant NEVER

has to pay the plaintiff's (injured party's) attorney's fees and costs. That means that this law will **only** apply to plaintiffs. ***Only you, and not the party that hurt you, will risk financial ruin if you file suit.***

Does that really seem fair to you? Big business and insurance companies may be able to afford it, but can you?

If not, then write your state legislators and state senators. Tell them that you want to preserve your right to have your day in court that is protected by our Constitution.

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About Our Law Firm

Our family owned firm was formed in 1991. Our attorneys practice primarily in the areas of business creation and support, business litigation, and commercial collections. We also handle Will preparation, probate and estate planning. Please let us know if we may be of assistance.



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