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January 30, 2013

Ms. Marisa Secco
Rules Attorney, Texas Supreme Court
Post Office Box 12248
Austin, Texas 78711

Re: Proposed Adoption of Rules Governing Expedited Trials in Texas

Dear Ms. Secco:

DRI, *The Voice of the Defense Bar*, is a 22,000 member organization of lawyers and corporate counsel who defend civil litigation in the United States, Canada and Europe. We stand with the Texas Association of Defense Counsel (TADC), our affiliated state defense organization, in opposing the Texas Supreme Court's proposed Rule 169 because it severely limits the fair dispensation of justice in trials where the amount in controversy does not exceed one hundred thousand ($100,000) dollars.

We further endorse and urge you to adopt the position of the TADC that was communicated by Dan K. Worthington, its president, in his letter of December 6, 2012. Without repeating that correspondence in its entirety, DRI nevertheless feels certain salient points of the letter are worth emphasizing.

- The proposed rule provides a significant advantage to plaintiffs in Texas civil litigation in that it affords sole discretion to the party bringing the action to determine whether or not a matter should be submitted for a compulsory expedited trial. In essence the proposed system allows plaintiffs to control access to the Expedited Jury Trial Procedure. Such a process is lacking in fundamental fairness. A more equitable process is a voluntary one that allows both parties to exercise independent judgment in treating a case according to the rules governing expedited trials.
- Rule 169 (a) (1) excludes counterclaimants from the $100,000 monetary limitation. Such a provision allows for the subversion of the legislative intent to restrict the amount in controversy. It further forces defendants to defend matters where the true amount of all claims could far exceed $100,000, while severely restricting the defendant's ability to conduct discovery and present its side of the case in an extremely limited amount of time.
- The proposed rules do not provide for appellate review of an order granting or denying a motion to remove a given case from the expedited process.

55 West Monroe Street | Suite 2000 | Chicago, IL 60603
P: 312.795.1101 | F: 312.795.0747 | E: dri@dri.org | dri.org | dritoday.org

DRI feels that an expedited trial process is a noble undertaking, but only if that process places both parties on an equal footing and provides for the exercise of fundamental principles established for civil trials. One of the founding principles of our organization is the preservation of the civil jury trial, and the expedited trial process indeed has the potential to assist in that regard because it provides a reasonable alternative to mediation and arbitration. However, that process must be equitable and free from advantages to one of the parties. To adopt a system that is well-intended but flawed, as we believe to be the case with proposed Rule 169, is to invite abuse and unintended consequences. For these reasons and those set forth in the aforementioned letter of December 6, 2012, we urge you to adopt the recommendations set forth by the Texas Association of Defense Counsel.

Respectfully submitted,

Mary Massaron Ross

Mary Massaron Ross
DRI President

cc: DRI Executive Committee
Dan K. Worthington, TADC President