

BILL ANALYSIS

Senate Research Center
81R5668 MDR-D

S.C.R. 33
By: Jackson, Mike
Jurisprudence
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Betty Bardwell alleges that she was employed by the Rebecca Sealy Hospital, part of The University of Texas Medical Branch at Galveston (UTMB-Galveston). On or about May 13, 2003, she slipped on a liquid substance on the floor of the employee break room at the Rebecca Sealy Hospital. As a result of the fall, she sustained injuries to her right wrist that required surgery. There were no warning signs that indicated housekeeping had mopped the floor. She reported the incident to David H. McLaren of UTMB-Galveston, and Bardwell alleges that his subsequent report to The University of Texas System Workers' Compensation Insurance Company was "totally incorrect." David McLaren's report indicated that Betty Bardwell knowingly walked on a wet floor despite warning signs. Her reputation has been damaged as a result of the inaccurate report. The Texas Workers' Compensation Commission (TWCC) conducted a hearing on January 5, 2004, to determine the validity of her claims. The decision was favorable to Betty Bardwell. Additionally, Betty Bardwell signed an "Authorization for Release of Information" addressed to Dr. Emmie Ko, the surgeon who performed the wrist surgery, on which she indicated that only medical records related to the injuries sustained in the fall should be released. During the TWCC hearing, she discovered that Bradley D. McClellan, assistant attorney general for the State of Texas, had access to her entire medical file. UTMB-Galveston released her entire medical file to Rydman Record Retrieval, a company that was contracted by the Office of the Attorney General (OAG) to obtain her medical records. The original "Authorization for Release of Information" was altered by either the OAG or Rydman Record Retrieval, and Bardwell alleges that Dr. Emmie Ko's name had been removed from the request. The request as submitted by Rydman Record Retrieval was not compliant with the Health Insurance Portability and Accountability Act of 1996. Bradley D. McClellan is ultimately responsible for the altered release form. Betty Bardwell is entitled to exemplary damages in the amount of \$500,000.

[**Note:** While the statutory reference in this bill is to the Texas Workers' Compensation Commission (TWCC), the following amendment affects the Texas Department of Insurance, as the successor agency to TWCC.]

RESOLVED

That Betty Bardwell is granted permission to sue the State of Texas, The University of Texas Medical Branch at Galveston (UTMB-Galveston), and the Office of the Attorney General subject to Chapter 107 (Permission to Sue the State), Civil Practice and Remedies Code.

That the president of UTMB-Galveston and the attorney general be served process as provided by Section 107.002(a)(3) (related to a resolution that grants a person permission to sue the state), Civil Practice and Remedies Code.