

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 774
Corrected Copy 3/26/07

Short Title: Defendant's Liability for Codefendant-Agent. (Public)

Sponsors: Representatives Faison and Sutton (Primary Sponsors).

Referred to: Judiciary III.

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE COURT, UPON THE MOTION OF THE PLAINTIFF OR OF ITS OWN INITIATIVE IN A PENDING CIVIL ACTION INVOLVING MORE THAN ONE DEFENDANT WHERE (1) THE LIABILITY OF A DEFENDANT IS BASED SOLELY ON THE ACTS OR OMISSIONS OF A CODEFENDANT AS THE AGENT OF THIS DEFENDANT AND (2) THERE IS NO GENUINE ISSUE THAT THE CODEFENDANT IS THE AGENT OF THIS DEFENDANT, TO PROHIBIT THIS DEFENDANT FROM PARTICIPATING FURTHER IN DISCOVERY AND IN THE PRESENTATION OF THE DEFENDANTS' CASE AT TRIAL.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 1 of the General Statutes is amended by adding a new section to read:

§ 1-72.2. Defendant whose liability is based solely on the agency of a codefendant.

(a) In a pending civil action involving more than one defendant, the court may, upon the motion of the plaintiff or of its own initiative, prohibit a defendant from participating further in discovery and the presentation of the defendants's case at trial if the judge finds all of the following:

(1) The liability of this defendant is based solely on the acts or omissions of a codefendant as the agent of this defendant.

(2) There is no genuine issue that the codefendant is the agent of this defendant.

(b) The court shall issue a written order that contains a statement of reasons for the ruling sufficiently specific to permit appellate review. The order may also specify any conditions or limitations on granting the motion under this section that the court determines to be warranted under the facts and applicable law. An order under this section shall not be subject to an interlocutory appeal. Any interlocutory appeal of an order in violation of this subsection shall not divest the trial court of its jurisdiction.

1 (c) Orders issued under subsection (a) of this section shall not prohibit any other
2 party to the action from obtaining discovery from this defendant, from issuing a
3 subpoena for this defendant to appear as a witness, or from examining this defendant as
4 a witness at the trial."

5 **SECTION 2.** This act is effective when it becomes law and applies to
6 actions pending and actions commenced on or after that date.