

TEXAS
CIVIL
JUSTICE
LEAGUE

JOURNAL

ISSUE HIGHLIGHTS

- 4 Texas Tops State Economies
- 6 Texans Support Legal Reform
- 8 "Gone to Texas" Medical Liability Reform Improves Healthcare Access
- 20 TCJL PAC Marks 20th Anniversary

TEXAS CIVIL JUSTICE LEAGUE JOURNAL

Summer 2008

CONTENTS

- 1 President's Message
- 2 Policy Committees Prepare for 2009
- 3 Chairman's Column
- 4 Texas Tops State Economies
- 6 Texans Support Legal Reform
- 8 "Gone to Texas"
Medical Liability Reform
- 11 Defrocking Tort Reform
- 14 "Draw the Line in 2009"
Defend Legal Reform
- 15 National Survey Finds Voters
Want Judicial Elections
- 15 Texas Prosperity Project Launches
Voter Education Program
- 17 Texas Legal System Improves
in U.S. Chamber Ranking
- 18 Texas Tort System Ranks 18th
in 2008 U.S. Tort Liability Index
- 19 South Texas Rises to Number Two
in Nation's Judicial Hellholes®
- 20 Texas Civil Justice League PAC
Marks 20th Anniversary
- 21 Join the Texas Civil Justice League



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On the cover: The Goddess of Liberty statue atop the Texas Capitol was originally cast in zinc and placed on the dome in 1888. The Goddess stands nearly 16 feet tall, which makes the Texas Capitol taller than the United States Capitol. In 1986, a replica made of aluminum replaced the zinc original. The original Goddess of Liberty was restored and placed on display in the Bob Bullock Texas State History Museum.

Texas Civil Justice League

Leading the Legal Reform Fight Since 1986

The Texas Civil Justice League Journal is published by the Texas Civil Justice League. Since 1986, the Texas Civil Justice League has led the fight to create a strong business climate by restoring fairness and stability to the civil justice system.

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President's Message

Once the "world's courtroom," Texas has proven that improvements to the civil justice system fuel economic growth and expand access to healthcare. The nation is clearly taking notice:

CNBC ranks Texas as the top state for business in a recently released nationwide economic competitiveness index.

This year, the Lone Star State passed California and New York as home to the most Fortune 500 company headquarters.

The Federal Reserve Bank of Dallas says the state's globally-integrated economy outpaced the nation last year and analysts say the 2008 outlook is positive.

According to the 2007 Tillinghast tort costs study, Texas's legal reforms are a national model and led to the first decrease in tort costs since 1997. The report specifically cited asbestos and medical liability reform.

Medical liability reform has been linked to a record number of physician applications for Texas licenses last year, and that trend continues.

The encouraging news proves what the Texas Civil Justice League and its members have been saying for twenty years. A balanced legal system improves the state's ability to compete in a global marketplace. That means more jobs and a better quality of life for Texans.

Unfortunately, Newton's Third Law applies as much to legal reform as science: for every action, there is an equal, but opposite, reaction. In recent testimony before House and Senate interim committees, the Texas Trial Lawyers Association and their allies have made it clear that they will seek significant changes in the legal system during the 2009 legislative session. The most likely targets for proposed change include the recently enacted asbestos reform, key components of the 2003 medical liability reforms, the treatment of reimbursed health care expenses in personal injury litigation (the so-called "paid or incurred" issue), and the ability of private plaintiffs to pursue "false" claims arising out of state contracts (*qui tam*). In addition, the Texas Supreme Court's decision respecting workers' compensation immunity for premises owners acting as general contractors (*Entergy v. Summers*) has also put construction liability issues in the legislative spotlight. As a result, the Texas Legislature is expected to review contracting, insurance, and safety requirements on construction projects next year.

During the past several months, the Texas Civil Justice League has made changes designed to enhance member services, raise the organization's profile with the legislature and media, and prepare policy positions for the 2009 legislative session. The board of directors and executive committee were expanded to include a broader representation of the League's diverse business membership. As always, the League's top priority is responding to the concerns of its members. Toward that end, five policy committees, chaired by recognized business and industry leaders, have been meeting regularly to develop legislative proposals and recommendations for the 81st Regular Session, which convenes January 13, 2009.

One of the most important things the League and its members have learned during twenty years of successful legislative results is that political winds alter direction quickly. Sudden change is a certainty of Texas politics and those who think they know what is going to happen are usually left empty-handed on election day. That's why the League has always been careful to avoid "burning bridges" by working in good faith with lawmakers on both sides of the aisle and conducting business with the highest standards of honesty, integrity, and good sense. This philosophy of courtesy and professionalism has enabled the organization to win passage of significant legal reforms with legislative majorities of both parties.

In many ways, the League has never been in better shape with a business and professional membership more diverse than ever before. The League's leadership—executive committee, Business Council, and board of directors—reflects this diversity and enhances the organization's effectiveness as a broad-based business, health care, and local government coalition. There is also more direct member involvement in policy formation and strategic planning than ever before.

Thank you for your confidence in the Texas Civil Justice League and its mission.

George S. Christian
President

Policy Committees Prepare for 2009 Session

Just after the 2007 legislative session ended, the Texas Civil Justice League organized five policy committees to develop and recommend proposals for the next regular session, which convenes January 13, 2009. League members are encouraged to participate in one or more committees.

For more information about conference calls, meetings, and policy proposals, contact Lisa Kaufman (lisa@tcjl.com) or Carol Sims (carol@tcjl.com) via e-mail or phone (512-320-0474).

The policy committees' deliberations have already proved productive with wide-ranging legislative proposals being considered and fine-tuned. The committees benefit from the direction of association, business, and industry leaders, including:

CONSTRUCTION LIABILITY AND RISK MANAGEMENT

Jay Gibson, Counsel, The Dow Chemical Company

COURTS

Ed Pickle, Senior Government Affairs Counsel, Shell Oil Company

GENERAL LIABILITY

Louis J. Goodman, PhD, Executive Vice President and CEO, Texas Medical Association

MASS TORTS

Kay Andrews, Managing Partner, Brown McCarroll L.L.P.

PRODUCT LIABILITY

Travis Pearson, Associate General Counsel, Flint Hills Resources

The Construction Liability and Risk Management Committee has made progress refining the League's position on issues surrounding the *Entergy v. Summers* litigation, indemnity and additional insured contracts, and owner-controlled insurance programs. The Mass Torts Committee is preparing for potential challenges to the 2005 asbestos reform litigation and administration of the asbestos multi-district litigation court. The Mass Torts Subcommittee on Rules is currently drafting three new rules for submission to the Texas Supreme Court Rules Advisory Committee. The Product Liability Committee is looking at broad issues relating to alternative fuel sources, climate change, and energy. The public policy issues under consideration by these committees will have a significant impact on the state's business climate and global competitiveness in the coming decades.

Chairman's Column

Robert L. Looney

President
TEXAS OIL AND GAS ASSOCIATION

Chairman, Executive Committee
TEXAS CIVIL JUSTICE LEAGUE

For more than twenty years, the Texas Civil Justice League has led the fight for legal reform. The League was established in 1986 by associations and businesses who recognized the importance of having an institutional presence to counter the Texas Trial Lawyers Association and press for comprehensive legal reform. Those efforts have fueled economic growth and turned the state's judicial system from a national disgrace to a national model. The League's philosophy has stayed the same from the beginning: working in good faith with lawmakers on both sides of the aisle to ensure a balanced and fair legal system.

The League hasn't been alone in fighting for legal reform. The organization's legislative achievements would not have been possible without the support of many like-minded partners, including the Citizens Against Lawsuit Abuse groups across the state, American Legislative Exchange Council, American Justice Partnership, American Tort Reform Association, Civil Justice Reform Group, National Conference of State Legislatures, and the U.S. Chamber Institute for Legal Reform.

The positive outcome of legal reform is evident. Just read the next article in this issue about the state's robust economy. Texas tops almost every national economic index, report and survey. These results didn't happen by accident. The League's members and allies have always known that a state's legal climate is a significant factor in expansion and relocation.

Not surprisingly, the price of victory is vigilance. In recent legislative testimony, representatives of the Texas Trial Lawyers Association and the "front groups" they fund outlined a sweeping plan of attack. The plaintiffs bar will seek to weaken, if not reverse, the state's landmark legal reform. They have already begun using the influence vast financial resources can buy to disseminate falsehoods and misinformation about the effects of reform. You can expect an assault on the Texas Supreme Court and an avalanche of disreputable "academic" studies and reports before the next legislative session convenes. The plaintiffs bar will try to convince Texans that legal reform has reduced accountability and fairness in the judicial system. Nothing could be further from the truth. After decades of abuse at the hands of aggressive and wealthy trial lawyers, legal reform has created a level playing field at the courthouse.

The League's diverse business membership has always driven its legislative program. Members now have opportunities to become involved and participate in public policy development like never before. If you are not a League member, please consider joining and become part of the state's premier legal reform organization. As a member for more than twenty years, I guarantee the "return on investment" is substantial.

Texas Tops State Economies

A state's legal climate is a crucial factor in business expansion and economic growth. By most measures, Texas tops state economies. During the past two years, the Texas economy experienced its strongest economic growth since the high-tech boom of 1998-99.

A July 2008 CNBC survey ranks Texas as the nation's top state for business. "There is simply no better place to live, work, grow a business, and raise a family than the great State of Texas," said Governor Rick Perry. "We have the best business climate in the country and remain globally competitive thanks to our reasonable regulations, low taxes, fair legal environment, educated workforce, and unparalleled quality of life."

This year, Texas surpassed California and New York as home to the most Fortune 500 company headquarters and *CEO Magazine* name Texas the "Best State to Do Business" for the third year in a row. According to Federal Reserve Bank of Dallas analysts, the Texas economy outpaced the nation last year and is on track to do the same in 2008.

In the first four months of 2008, the Texas gained 69,300 jobs, while the national economy lost 184,000. During the past five years, Texas has created 1.2 million new jobs. More than half of all the jobs created in the United States last year were in Texas.

"There is simply no better place to live, work, grow a business, and raise a family than the great State of Texas."

Governor Rick Perry

State Rank	Company	Fortune 1000	Revenues (\$ millions)	City
1	Exxon Mobil	2	372,824.0	Irving
2	ConocoPhillips	5	178,558.0	Houston
3	AT&T	10	118,928.0	San Antonio
4	Valero Energy	16	96,758.0	San Antonio
5	Dell	34	61,133.0	Round Rock
6	Marathon Oil	36	60,044.0	Houston
7	Sysco	70	35,042.1	Houston
8	Enterprise GP Holdings	90	26,713.8	Houston
9	AMR	109	22,935.0	Fort Worth
10	Electronic Data Systems	115	22,135.0	Plano
11	Tesoro	116	21,675.0	San Antonio
12	Plains All American Pipeline	121	20,394.0	Houston
13	J.C. Penney	126	19,860.0	Plano
14	Kimberly-Clark	136	18,266.0	Irving
15	Fluor	148	16,691.0	Irving
16	Anadarko Petroleum	159	15,916.0	The Woodlands
17	Burlington Northern Santa Fe	160	15,802.0	Fort Worth
18	Halliburton	167	15,264.0	Houston
19	United Services Automobile Assn.	176	14,417.9	San Antonio
20	Centex	177	14,292.7	Dallas
21	Continental Airlines	178	14,232.0	Houston
22	Texas Instruments	185	13,835.0	Dallas
23	Waste Management	199	13,310.0	Houston
24	Dean Foods	224	11,821.9	Dallas
25	Knight	230	11,505.7	Houston
26	D.R. Horton	235	11,296.5	Fort Worth
27	Reliant Energy	237	11,208.7	Houston
28	Baker Hughes	252	10,428.2	Houston
29	Apache	262	9,977.9	Houston
30	Southwest Airlines	267	9,861.0	Dallas
31	National Oilwell Varco	268	9,789.0	Houston
32	CenterPoint Energy	271	9,623.0	Houston
33	Tenet Healthcare	280	9,358.0	Dallas
34	KBR	284	9,194.0	Houston
35	Smith International	302	8,764.3	Houston
36	Commercial Metals	303	8,751.2	Irving
37	Energy Future Holdings	317	7,992.0	Dallas
38	Pilgrim's Pride	327	7,598.6	Pittsburg

State Rank	Company	Fortune 1000	Revenues (\$ millions)	City
39	Clear Channel Communications	339	7,363.5	San Antonio
40	Western Refining	342	7,305.0	El Paso
41	Enbridge Energy Partners	343	7,282.6	Houston
42	Targa Resources	344	7,269.7	Houston
43	GameStop	348	7,094.0	Grapevine
44	Energy Transfer Equity	361	6,792.0	Dallas
45	Celanese	367	6,641.0	Dallas
46	Whole Foods Market	369	6,591.8	Austin
47	Group 1 Automotive	379	6,393.0	Houston
48	Atmos Energy	416	5,898.4	Dallas
49	Affiliated Computer Services	423	5,772.5	Dallas
50	Blockbuster	434	5,544.4	Dallas
51	XTO Energy	436	5,513.0	Fort Worth
52	Frontier Oil	462	5,188.7	Houston
53	BJ Services	482	4,802.4	Houston
54	Holly	484	4,791.7	Dallas
55	El Paso	486	4,749.0	Houston
56	Spectra Energy	487	4,742.0	Houston
57	Cameron International	490	4,666.4	Houston
58	FMC Technologies	498	4,638.6	Houston
59	Comerica	501	4,618.0	Dallas
60	Neiman Marcus	513	4,419.7	Dallas
61	Brinker International	519	4,376.9	Dallas
62	RadioShack	531	4,251.7	Fort Worth
63	EOG Resources	538	4,190.8	Houston
64	Temple-Inland	557	3,926.0	Austin
65	Michaels Stores	564	3,862.0	Irving
66	Crosstex Energy	565	3,860.4	Dallas
67	Trinity Industries	569	3,832.8	Dallas
68	Flowserve	576	3,762.7	Irving
69	Lennox International	579	3,749.7	Richardson
70	Torchmark	602	3,486.7	McKinney
71	Dynegy	612	3,410.0	Houston
72	Noble Energy	627	3,272.0	Houston
73	Westlake Chemical	641	3,192.2	Houston
74	Idearc	642	3,189.0	Dallas/ Ft. Worth Airport
75	American National Insurance	662	3,071.1	Galveston

State Rank	Company	Fortune 1000	Revenues (\$ millions)	City
76	US Oncology Holdings	673	3,000.8	Houston
77	CVR Energy	680	2,966.9	Sugar Land
78	Benchmark Electronics	690	2,915.9	Angleton
79	Rent-A-Center	692	2,906.1	Plano
80	Pride International	715	2,760.3	Houston
81	Quanta Services	735	2,670.7	Houston
82	Adams Resources & Energy	744	2,636.2	Houston
83	Southern Union	750	2,616.7	Houston
84	Perot Systems	752	2,612.0	Plano
85	Exterran Holdings	762	2,540.5	Houston
86	Susser Holdings	763	2,539.2	Corpus Christi
87	Sally Beauty Holdings	769	2,513.8	Denton
88	Zale	784	2,437.1	Irving
89	HCC Insurance Holdings	794	2,388.4	Houston
90	AmeriCredit	805	2,339.9	Fort Worth
91	Service Corp. International	808	2,327.9	Houston
92	Alliance Data Systems	817	2,291.2	Dallas
93	MetroPCS Communications	828	2,235.7	Richardson
94	ENSCO International	855	2,143.8	Dallas
95	Grant Prideco	863	2,118.7	Houston
96	Patterson-UTI Energy	864	2,114.2	Snyder
97	Men's Wearhouse	865	2,112.6	Houston
98	Stewart Information Services	867	2,106.7	Houston
99	Rowan	870	2,095.0	Houston
100	Oil States International	872	2,088.2	Houston
101	Pioneer Natural Resources	875	2,071.3	Irving
102	Quanex	880	2,049.0	Houston
103	Rush Enterprises	886	2,030.8	New Braunfels
104	Metals USA Holdings	930	1,845.3	Houston
105	Newfield Exploration	942	1,791.0	Houston
106	Helix Energy Solutions Group	955	1,767.4	Houston
107	Oceaneering International	961	1,743.1	Houston
108	Chaparral Steel	970	1,722.9	Midlothian
109	ExpressJet Holdings	977	1,685.5	Houston
110	Cinemark Holdings	978	1,682.8	Plano
111	Dresser-Rand Group	985	1,665.0	Houston
112	Key Energy Services	986	1,662.0	Houston
113	Complete Production Services	991	1,655.2	Houston

Texans Support Legal Reform

Texas voters believe additional legal reform is necessary and that lawsuit abuse is costing jobs and hurting the state's economy, according to the results of a benchmark poll conducted for the Texas Civil Justice League.

In a survey conducted by The Eppstein Group of 1,001 Texas voters, 61 percent agreed that additional tort reform was needed in Texas and 67 percent agreed that lawsuit abuse is costing jobs and hurting the economy. Sixty-one percent of respondents said trial lawyers were filing too many lawsuits in their area of the state. Sixty-five percent favored caps and limits on jury awards for pain, emotional suffering and other non-economic damages in lawsuits against doctors and hospitals.

In the 2008 elections for the Texas Supreme Court, voters said they would prefer candidates backed by business groups rather than the Texas Trial Lawyers Association.

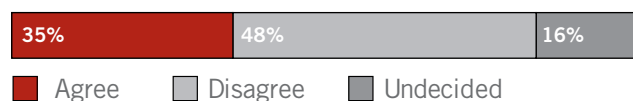
Do you agree or disagree that **additional tort reform and lawsuit reform is needed in Texas?**



Do you agree or disagree that **lawsuit abuse in Texas is costing jobs and hurting the economy?**



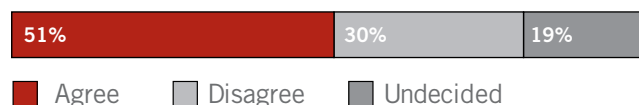
Do you agree or disagree that **trial lawyers in Texas do a good job of helping protect consumers** from injustices of big business and bad products?



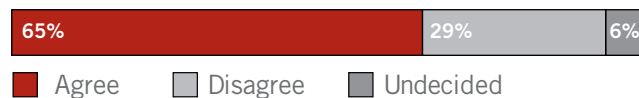
Do you agree or disagree that personal injury **trial lawyers are filing too many lawsuits** in your area of Texas?



Do you agree or disagree that **medical malpractice reforms** have been good for Texas?



Do you favor or oppose **caps and limits** on jury awards for pain, emotional suffering, and other non-economic damages in lawsuits against doctors and hospitals?



The Eppstein Group surveyed 1,001 registered Texas voters during November 1–6, 2006. This sample size yields an average margin of error of ± 3.16 percent at a 95 percent confidence level. The geographic representation reflects actual 2004 and 2006 election turnout.

Texas voters believe additional legal reform is necessary and that lawsuit abuse costs jobs and hurts the economy.

61 percent agree that additional legal reform is needed in Texas

67 percent agree that lawsuit abuse costs jobs and hurts the economy



“Gone to Texas”

Like 19th Century Pioneers, Doctors Flock to the Lone Star State

Five years after Texas voters approved Proposition 12—a constitutional amendment that capped non-economic (i.e., “pain and suffering”) damages in medical liability lawsuits—the result is clear: access to healthcare is improving. Look no further than the number of doctors who have “Gone to Texas.” Between 2003 and 2007, nearly 11,000 new physicians have been licensed in the state, a 30 percent increase from the previous four years.

+ Despite the obvious benefits, personal injury trial lawyers will make “attacking the cap” a legislative priority in 2009. + Texas was facing a healthcare access crisis in 2003 when voters approved Proposition 12, a constitutional amendment to cap non-economic damages in medical liability lawsuits. From 1995 until 2002, claims against Texas doctors occurred at nearly twice the national average. The number of meritless lawsuits and damage awards were causing liability insurance rates to skyrocket, forcing many doctors to reduce or eliminate high-risk and life-saving care. A 2003 Texas Medical Association study found that 86 percent of all claims against Texas doctors resulted in no payment to the patient. A Texas Tech Law Review report at the same time found that (1) 30 percent of all verdicts were in excess of the defendant’s medical liability coverage and (2) a disproportionate growth in non-economic (i.e., “pain and suffering”) awards. In fact, from 1989 to 1999 the average non-economic award quadrupled to nearly \$1.4 million according to the Texas Department of Insurance. Thirteen physician liability carriers went out of business, left the state, or began withdrawing from this line of coverage because of large losses, leaving at least 6,500 doctors without coverage. Doctors began restricting their practices or left medicine altogether. The ranks of medical specialists dwindled. Hospitals could not obtain “on-call” coverage for emergency departments. Capital improvements and new patient services were abandoned. + In 2003, passage of House Bill 4 by the Texas Legislature and

Proposition 12 by voters resulted in landmark legal reform. Undoubtedly, the cap on non-economic damages in medical liability lawsuits was the most important part of the omnibus reforms. The \$250,000 cap provided for no exceptions and was not indexed for inflation. However, medical bills, lost wages, custodial care, and prejudgment interest remained uncapped. The positive effects were evident quickly. Medical liability reform improved access to care, stemmed the loss of doctors, and stabilized insurance costs.

Proposition 12 Produces Healthy Benefits

Improving access to medical care is critically important to all Texans.

This is especially true for children, pregnant women, the aged, the poor, those in an emergent condition and those in rural Texas.

Charity care has greatly increased since the passage of the 2003 reforms.

Charity care rendered by Texas hospitals rose 24 percent in the three years following the passage of Proposition 12. But for the 2003 reforms, this \$594 million increase in charity care expenses would have left many Texas hospitals with the stark choice of turning away charity care patients or closing their doors altogether. The state's non-profit hospitals saw their charity care costs increase 36 percent in this same time frame.

House Bill 4, which included the 2003 medical liability reforms, has a track record of improving access to medical care.

Texas licensed a record 3,324 new doctors in 2007; 808 more than 2006.

Since the passage of the 2003 reforms, the state has improved its national standing from 48th to 42nd in the American Medical Association's measurement of patient-care doctors per capita.

The physician growth rate in El Paso is 76 percent greater than pre-reform.

The physician growth rate in San Antonio is 55 percent greater than pre-reform.

The physician growth rate in Houston is 36 percent greater than pre-reform.

After years of decline, the ranks of medical specialists are growing.

After a net loss of 14 obstetricians from 2001 to 2003, Texas experienced a net gain of 186 obstetricians.

Texas experienced a net loss of 9 orthopedic surgeons from 2000 to 2003. Since tort reform, the state experienced a net gain of 156 orthopedic surgeons.

Texas has experienced a net gain of 26 neurosurgeons since Proposition 12, including one each in the medically underserved communities of Corpus Christi and Beaumont.

If the pending applicants are approved, the statewide total of pediatric intensive care, pediatric emergency medicine and pediatric infectious disease specialists will double.

Doctors are bringing critical specialties to underserved areas.

Since the passage of reforms, the Rio Grande Valley has added 189 physicians. That represents a robust 16.6 percent increase in Cameron County and an even greater 17.9 percent increase in Hidalgo County. Both growth rates exceed the state average.

Jefferson, Nueces and Victoria counties saw a net loss of physicians in the 18 months prior to tort reform. Currently, all three counties are producing impressive gains, adding much-needed specialists and emergency medicine physicians.

Hospitals are upgrading equipment, expanding their emergency rooms, launching patient safety programs and expanding their level of charity care.

Hospitals have also been freed to expand outpatient services, improve salaries for nurses and increase payment to on-call physicians.

Physicians' liability insurance premiums are stable and reduced.

All major physician liability carriers in Texas have cut their rates since the passage of the reforms, most by double-digits. Texas physicians have seen their liability rates cut, on average, 24.3 percent. Two-thirds of Texas doctors have seen their rates slashed a quarter or more.

Seventeen rate cuts have occurred in Texas since the passage of the 2003 landmark reforms.

Reductions in premiums since the passage of Proposition 12 and respective savings:

Texas Medical Liability Trust: 31.3 percent and \$200 million in savings plus three renewal dividends totaling an additional \$75 million.

APIE: 17.4 percent and \$14.8 million in savings

Medical Protective: 25.7 percent and \$12.6 million in savings

Joint Underwriting Association (JUA): 10 percent and \$6 million in savings)

The Doctors Company: 25.3 percent and \$4.2 million in savings

Advocate MD: 29.5 percent and \$5.34 million in savings

Cumulative liability cost savings since January 2004: \$327.94 million

About half of the state's doctors are now paying lower liability premiums than they were in 2001.

Competition in the Health Care Liability Market Increasing

Since the passage of Proposition 12, Texas has added:

Four new admitted, rate-regulated carriers: Advocate MD of the Southwest, Medical Liability Insurance Company of America, Medicus Insurance Company and the Physicians Insurance Company.

Twenty-six risk retention groups, captives, surplus lines and other unregulated insurers.

Texas physicians can competitively shop their policies.

Thirteen percent of the commercial physician liability market is being insured by companies new to Texas since February 2003.

Claims and lawsuits in most Texas counties have been cut in half.

Changing HB 4 will hurt access to medical care.

CHRISTUS Spohns' Westside Corpus Christi clinic serving the indigent and its Diabetes Excellence Program are funded by the hospital's medical liability savings. Take away the savings and the programs are jeopardized.

Driscoll Children's Hospital in Corpus Christi used its liability savings to open satellite clinics in the border cities of Brownsville and McAllen. Take away the savings and the programs are jeopardized.

Kelsey-Seybold Clinic in Houston is using its liability savings to fund an electronic medical record. This electronic medical record will eliminate sources of medical error due to illegibility, monitor for medication allergies and alert the prescribing physician about drug interactions. It will also allow results to be graphed to show doctor and patient trends over time and will reduce the cost of health care through more efficient handling of medical information. This \$20 million electronic medical record investment would not be possible without the savings achieved by medical liability reform. Kelsey-Seybold treats 1.1 million patient visits a year in the Houston area.

Source: Texas Medical Association

Defrocking Tort Deform

American Tort Reform Foundation Report

In recent years, the organized personal injury bar (the newly named American Association for Justice, formerly the Association of Trial Lawyers of America) and its state sister groups have initiated a campaign in state legislatures to increase their business. These efforts fall into two general categories. First, bills that scale back or outright repeal common-sense reforms that reeled in an out-of-control civil justice system. Second, bills that create new types of lawsuits or increase the potential for high awards.

The legislative push for expanded liability represents a more activist strategy in state legislatures. For more than thirty years, the principal manner in which personal injury lawyers attacked legislative civil justice or tort reform was through the courts. This process came to be known as “judicial nullification of tort reform.” Although some state supreme courts, including California and Michigan, have followed traditional separation of powers principles and sustained the legislature’s constitutional authority to enter and shape the civil justice arena, the personal injury bar has been successful in its judicial attacks on tort reform.

Now, the personal injury bar has opened up this second front to attack existing civil justice reforms through the legislature. The plaintiffs’ lawyers and their allies have increased lobbying efforts, which have shown particular viability where personal injury lawyer groups have contributed substantially to the election of representatives on key legislative committees and to state legislatures as a whole. Often, these efforts toward change are not overtly led by recognized personal injury groups, but by so-called “consumer groups” who help fulfill the trial-lawyer agenda.

Going forward, it is particularly important to:

Keep a close watch for legislation that rolls back enacted legal reforms, such as attempts to limit apportionment of damages, lift limits on non-economic damages, or repeal laws that limit liability when a defendant has faithfully adhered to government regulations.

Closely examine legislative language to determine whether it might create a new private right of action, either explicitly or implicitly. Demand transparency.

Scrutinize proposals that would deputize private profit-driven lawyers to sue on behalf of the state to ensure that the claims brought are in the public interest and do not provide a windfall in fees.

Ensure that consumer protection laws continue to serve their intended purpose: to compensate individuals for actual losses caused by their reliance on a deceptive business practice. Guard against legislation that expands their reach into already-regulated industries, allows lawsuits without injury, or permits damages far in excess of financial loss.

Stop attempts to expand liability in wrongful death actions, such as proposals to allow recovery by distant family members or immeasurable emotional harm. Such changes will dramatically increase the potential for excessive awards.

Adhere to traditional principles of law with respect to damages in cases involving the injury or death of an animal. Proposals that would permit recovery for an owner’s emotional harm would lead to more lawsuits, higher insurance rates for veterinarians, and ultimately increase the cost of veterinary care, threatening its affordability.

Prevent the chipping away of statutes of limitations and repose, which ensure that lawsuits are timely brought with the benefit of the most reliable evidence.

Resist efforts to target particular industries that are driven by politics and profit, not sound public policy.

To download the entire report, visit www.atra.org.



(1) Texas Civil Justice League (TCJL) President George S. Christian waits with State Representatives Dan Gattis (R-Georgetown), Mark Strama (D-Austin), and Byron Cook (R-Corsicana) to participate in a panel discussion at the American Tort Reform Association (ATRA) 2007 Annual Conference for State Coalition Leaders. TCJL provided program support for the national meeting, which was held at the Driskill Hotel in Austin, November 12–14, 2007.



(2) Bryan Eppstein of The Eppstein Group discusses results of the TCJL voter survey during a political forecasting panel at the ATRA Conference. (See related story on page six.)



(3) Harvey Kronberg, editor of *The Quorum Report*, Christy Hoppe, bureau chief of *The Dallas Morning News*, and Bryan Eppstein answer questions during an ATRA Conference panel discussion on the 2008 elections.



(4) Former TCJL President and ATRA Chairman Ralph Wayne was honored at the conference for his contributions to legal reform. Dianne Davis and Martha McIver made a presentation to Wayne on behalf of East Texans Against Lawsuit Abuse.



(5) TCJL Vice President Carol Sims and Robert Jones of Pfizer confer during a board of directors meeting at the ATRA Conference.

(6) TCJL Executive Director and General Counsel Lisa Kaufman discusses the Texas Supreme Court's *Entergy v. Summers* decision, construction contracts, indemnity, and statutory employer issues during a TCJL Capitol briefing for legislative staff, February 27, 2008.



(7) Former TCJL President Ralph Wayne and ATRA President Sherman “Tiger” Joyce listen to presentations at a climate change litigation briefing for the TCJL Business Council, March 27, 2008.

(8) Former Texas Secretary of State Phil Wilson discusses the effects of climate change litigation and regulation on economic expansion and growth at the March 2008 TCJL Business Council meeting. Wilson is now the senior vice president for Public Affairs at Luminant.

(9) TCJL President George S. Christian gives Business Council members an overview of the threat posed by climate change litigation.

(10) Shannon Goessling of Atlanta, Georgia, discusses the questionable scientific basis for climate change litigation during the TCJL Business Council meeting. Goessling is executive director and chief legal counsel for the Southeastern Legal Foundation.

(11) Longtime TCJL counsel Shannon Ratliff and George S. Christian listen to Shannon Goessling’s presentation at the March 2008 Business Council briefing on climate change litigation.

(12) Richard O. Faulk of Gardere Wynn Sewell L.L.P. explains the public nuisance lawsuits and regulatory proposals sparking the plaintiffs’ bar’s climate change litigation initiatives. Faulk is a partner in Gardere’s Houston office where he chairs the litigation department and leads the firm’s Climate Change Task Force.

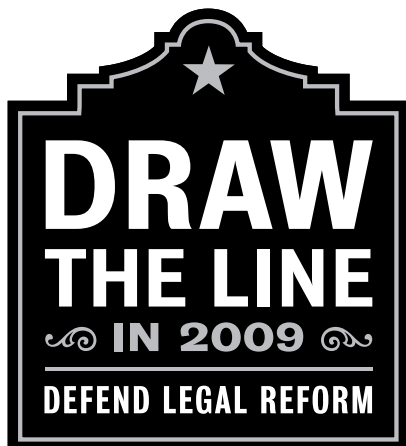
(13) Lisa Rickard, president of the U.S. Chamber of Commerce Institute for Legal Reform (ILR), welcomes guests to a dinner marking the organization’s tenth anniversary June 16, 2008 in Washington, D.C. Rickard has been president of ILR since 2003. TCJL Communications Director Cary Roberts attended the anniversary dinner, which was held at the U.S. Chamber of Commerce’s headquarters near the White House.

(14) U.S. Chamber President and CEO Thomas J. Donohue describes the federal and state legal reform gains during ILR’s ten-year history. Donohue has led the U.S. Chamber of Commerce, which is the world’s largest business federation, since 1997. John Stossel, co-anchor of ABC’s *20/20*, was the keynote speaker for the anniversary dinner.



Draw the Line in 2009

Defend Legal Reform



Twenty years of legal reform is under assault. This fall, the Texas Civil Justice League and allied business groups will launch a public awareness campaign to remind lawmakers and voters about the economic and healthcare benefits of legal reform.

The Texas Trial Lawyers Association (TTLA) and its allies revealed part of their 2009 legislative session “battle plan” at a Senate State Affairs Committee interim hearing in Austin, April 28, 2008. Plaintiffs’ bar witnesses disputed legal reform’s economic benefits and testified that accountability has been taken out of the civil justice system. Nelson Roach of Daingerfield, TTLA president-elect, turned the fairness argument on reformers with the slogan, “When no one is accountable, no one is safe.” “Tort reform has come from a discussion about fairness to a discussion about immunity,” Roach said. “I would argue that the discussion has shifted from the rule of law to lawlessness.” John Eddie Williams of Houston, one of five plaintiffs’ lawyers who represented Texas in the landmark tobacco settlement, attacked asbestos and silica litigation reform, singling out a Texas Supreme Court ruling that imposes “an extreme standard of exposure.” TTLA Past President Jay Harvey of Austin countered claims about

the success of healthcare liability reform and the constitutional cap on non-economic damages by arguing for (1) making it a per defendant cap in death cases, (2) adjusting the cap to the Consumer Price Index, (3) increasing the cap to a “legitimate number,” and (4) requiring health care providers carry adequate coverage (quid pro quo).

The Texas Civil Justice League will coordinate a comprehensive statewide communications plan through the 2009 legislative session that counters these and other attacks by the plaintiffs’ bar and revitalizes the state’s legal reform message. The strategy emphasizes a focused message—coordinated with statewide and national business and professional associations—to revitalize the legal reform message in Texas by emphasizing the economic benefits of sound business liability policy and defend against attacks from the plaintiff’s bar and its “front groups.”

www.drawtheline.us.com
Launching Fall 2008

National Survey Finds Voters Support Judicial Elections



Voters across America overwhelmingly support the direct election of state Supreme Court justices over a nominating commission/appointment process, according to a nationwide voter opinion survey conducted by the polling firm of Ayres, McHenry & Associates.

Seventy-five percent of voters think that state Supreme Court justices should be elected, while 21 percent think they should be appointed. After hearing a variety of arguments in favor of each position, voters maintain this position by a nearly identical 74 to 23 percent margin.

The American Justice Partnership Foundation (AJPF) commissioned the survey to inform the growing debate as to whether elections or gubernatorial appointments is the best method of selecting candidates for the bench. Currently twenty-one states hold elections and twenty-four states use a nominating commission/appointment process, the rest rely on gubernatorial or legislative appointment.

“The question of how to select state Supreme Court justices has been the focus of increasingly intense debate throughout America in recent years,” said Dan Pero, president of the American Justice Partnership. “Our hope is that the results of this survey will help state leaders better understand the will of the people as they wrestle with the important issue of how to best select justices for the highest state courts.”

Download the voter survey report at
www.americanjusticepartnership.org.

Texas Prosperity Project Launches Voter Education Program



Nearly every Texas voter is an employee, an employer, or a retiree. That means each of us has a vested interest in electing a state legislature that will keep Texas competitive in the global marketplace. Texas needs pro-business legislators who understand vital economic issues and how to spur growth.

How can voters tell where local legislative candidates stand on business issues?

Visit the Texas Prosperity Project (TXP2) online at www.txprosperity.com for comprehensive voter education resources, including election dates, public policy issues, and voter registration information.

TXP2 represents Texas employers and employees who want to be informed on economic issues before “heading to the polls.”

TXP2 is a partnership of business associations, chambers of commerce, and business associations, and leading companies dedicated to helping the Texas workforce “vote smart” on November 4, 2008. TXP2 is a non-partisan voter education program. TXP2 is affiliated with the Business Industry Political Action Committee (BIPAC).

For more information about becoming a TXP2 partner, contact
Stephanie Simpson (stephanie@txprosperity.com).



U.S. Chamber Institute for Legal Reform
2008 Overall Rankings of State Liability Systems
#41 Texas

American Justice Partnership Foundation
U.S. Tort Liability Index 2008 Output Rankings
#18 Texas

American Tort Reform Foundation
2007 Judicial Hellholes
#2 Rio Grande Valley and Gulf Coast, Texas

Texas Legal System Improves in U.S. Chamber Ranking

The state of Texas's legal climate ranks 41st in the country, climbing three places from last year and moving toward the national mainstream, according to the annual assessment of state liability systems released in April 2008 by the U.S. Chamber Institute for Legal Reform (ILR).

"The Texas Legislature has passed landmark legal reform during the past two decades, fueling job creation and increasing access to healthcare," said George S. Christian, Texas Civil Justice League president. "The Supreme Court's role is equally important. The current court has worked hard to restore faith in the system and the nation is taking notice."

Despite the encouraging news, Texas remains one of the ten worst legal climates in the country. Legal analysts point to problematic local jurisdictions in the Gulf Coast and Rio Grande Valley for Texas' low ranking. "The ILR/Harris survey is an important tool for lawmakers to see how reform is working," Christian said. "Laws are only as effective as the judges that interpret them."

The study comes from a survey of in-house general counsel or other senior corporate litigators exploring how reasonable and balanced the tort liability system is perceived to be by U.S. business.

Texas was ranked 46th in 2003 in the first study, and it improved slightly to number 45 in 2004, 44 in 2005, 43 in 2006, and 44 again in 2007. Delaware was ranked first for the sixth straight year, and Nebraska replaced Minnesota as number 2 in the 2008 report.

The survey showed that two in five senior attorneys (41 percent) view the fairness and reasonableness of state court liability systems in America as excellent or pretty good, while more than half (55 percent) view the systems as fair or poor.

A majority (64 percent) report that the litigation environment in a state is very likely or somewhat likely to impact important business decisions at their company, such as where to locate or do business, up from 57 percent in 2007. The report notes that perception links with reality. "If the states can change the way litigators and others perceive their liability systems, we may find considerable movement in their rankings in the

future," the institute said. "Once these perceptions change, the overall business environment may be deemed more hospitable as well."

In addition to the overall ranking, states were also ranked in twelve individual categories. Texas fared best (ranked number 29) in punitive damages and timeliness of summary judgment/dismissal and worst (number 43) in having and enforcing meaningful venue requirements, judges' impartiality, and juries' fairness.

The other seven categories for Texas were scientific and technical evidence (30), non-economic damages (31), judges' predictability (32), discovery (35), judges' competence (38), overall treatment of tort and contract litigation (39), and treatment of class action suits and mass consolidation suits (40).

The telephone survey of 957 respondents by Harris Interactive was conducted from December 18, 2007, to March 19, 2008, of in-house general counsel, senior litigators and other senior attorneys who are knowledgeable about litigation matters at companies with annual revenues of at least \$100 million.

For more information, Lawsuit Climate 2008 is available online at www.instituteforlegalreform.com.

2008 Overall Rankings of State Liability Systems

Top Ten

1. Delaware
2. Nebraska
3. Maine
4. Indiana
5. Utah
6. Virginia
7. Iowa
8. Vermont
9. Colorado
10. Kansas

Bottom Ten

- 41. Texas**
42. Florida
43. South Carolina
44. California
45. Hawaii
46. Illinois
47. Alabama
48. Mississippi
49. Louisiana
50. West Virginia

Texas Tort System Ranks 18th in 2008 U.S. Tort Liability Index

Earlier this year, the American Justice Partnership Foundation released the **U.S. Tort Liability Index: 2008 Report**, which measures the best and worst tort systems in the nation.

The index was developed by the Pacific Research Institute as a tool for business leaders and lawmakers to assess tort systems and enact laws that improve the business climate. The 2008 report uses comprehensive data on all fifty states to assess the outputs and inputs of each tort system and rank them accordingly.

Texas ranks eighteenth among the states in 2008 outputs, which includes cases filed, attorneys practicing to handle the cases, damage awards, and settlement amounts. The outputs from the U.S. tort liability system consist of monetary tort losses and litigation. The inputs to the U.S. tort liability system are largely the public policy in each state that shape the tort system outputs.

Texas ranks second only to Colorado among the states with the best overall rules “on the books.” The report singles out partisan judicial elections as one area of suggested improvement for Texas.

By merging the output and input results, states are divided into four groups: saints, sinners, salvageables, and suckers.

Texas is ranked as a “salvageable” state. “Salvageables” have moderate to high relative monetary tort losses and/or moderate to high litigation risks, yet have moderate to strong tort rules, probably as a result of recent reforms.

To download the entire report, visit www.legalreforminthenews.com.

American Justice Partnership Pacific Research Institute U.S. Tort Liability Index 2008 Output Rankings

1.	North Dakota	26.	Kansas
2.	Alaska	27.	Georgia
3.	North Carolina	28.	Michigan
4.	Iowa	29.	Louisiana
5.	Virginia	30.	Arkansas
6.	New Mexico	31.	Kentucky
7.	Utah	32.	Oregon
8.	Wyoming	33.	Arizona
9.	Mississippi	34.	California
10.	Maine	35.	Maryland
11.	Ohio	36.	Nevada
12.	Tennessee	37.	Washington
13.	South Dakota	38.	Connecticut
14.	South Carolina	39.	Alabama
15.	Hawaii	40.	West Virginia
16.	New Hampshire	41.	Massachusetts
17.	Wisconsin	42.	Colorado
18.	Texas	43.	Missouri
19.	Nebraska	44.	Rhode Island
20.	Oklahoma	45.	Pennsylvania
21.	Minnesota	46.	Montana
22.	Indiana	47.	Illinois
23.	Vermont	48.	New York
24.	Delaware	49.	New Jersey
25.	Idaho	50.	Florida

South Texas Rises to Number Two in Nation's Judicial Hellholes®

The Rio Grande Valley and Gulf Coast rose to second in the American Tort Reform Foundation (ATRF) **2007 Judicial Hellholes®** report, an annual report that documents litigation abuses. South Texas, which topped 2005's list of "jackpot jurisdictions," was surpassed this year only by South Florida as "among the nation's most unfair civil court jurisdictions."

"Judicial hellholes" are state courts where judges systematically apply laws and court procedures in an unfair and unbalanced manner, generally against defendants in civil lawsuits.

"Though Texas enacted important reforms in 2003 and 2005, vastly improving its civil justice climate, personal injury lawyers are still managing to live 'high off the hog,'" said Sherman "Tiger" Joyce, president of the American Tort Reform Association.

"Texans deserve a judicial system that is equitable and fair," said George S. Christian, president of the Texas Civil Justice League. "Despite landmark legal reform, problem areas remain. The perception of 'jackpot jurisdictions' hurt the state's economy by discouraging business expansion and growth."

The Rio Grande Valley and Gulf Coast have earned reputations as a "plaintiff paradise," appearing on the "Judicial Hellholes" list for six consecutive years. Trial courts often order new trials when the jury finds for the defendant; campaign and financial relationships exist between plaintiff's lawyers and some judges; forum-shopping is more prominent than in other parts of the state; and it is more difficult to compel some courts to follow procedural rules, including those relating to summary judgments and "junk science."

South Florida tops the list of areas of the U.S. that "have developed a reputation for uneven justice," and the Rio Grande Valley and Gulf Coast of Texas rank second. The area includes the counties of Jefferson, Brazoria, Cameron, Hidalgo, Nueces, Starr and Zapata.

Also ranked in "Judicial Hellholes 2007" were (3) Cook County, Ill., (4) West Virginia, (5) Clark County, Nevada, and (6) Atlantic County, N.J. The report, available online at

www.atra.org, also presents a watch list of seven additional jurisdictions, five dishonorable mentions, and six points of light that "provide examples of judges adhering to the law and reaching fair decisions as well as legislative action that has yielded positive change."

The report highlights several reforms that can restore balance, including stopping "litigation tourism," enforcing consequences for bringing frivolous lawsuits, stemming abuse of consumer laws, providing safeguards to ensure that pain and suffering awards serve a compensatory purpose, strengthening rules to promote sound science, addressing medical liability issues to protect access to health care, and prioritizing the claims of those who are actually sick in asbestos and silica cases. "Experience shows that one of the most effective ways to improve the litigation environments in 'Hellholes' is to bring the abuses to light so everyone can see them," the ATRF said.

Like referees and umpires in sports, the report noted, judges are unbiased arbiters who enforce rules, but never determine the outcome of a case. Judges in "Judicial Hellholes" hold "considerable influence over the cases that appear before them"—influence that includes pre-trial rulings, decisions during trial, unreasonable expansions of liability and judicial integrity.

In examples of how tort reform works, the ATRF report said that the number of insurance companies offering medical malpractice insurance increased from four in 2003 to thirty in 2007, applications for physician licenses in Texas have increased, and the largest writer of medical malpractice insurance in Texas reduced its rates by 31 percent.

American Tort Reform Foundation 2007 Judicial Hellholes

1. South Florida
2. Rio Grande Valley and Gulf Coast, Texas
3. Cook County, Illinois
4. West Virginia
5. Clark County, Nevada
6. Atlantic County, New Jersey

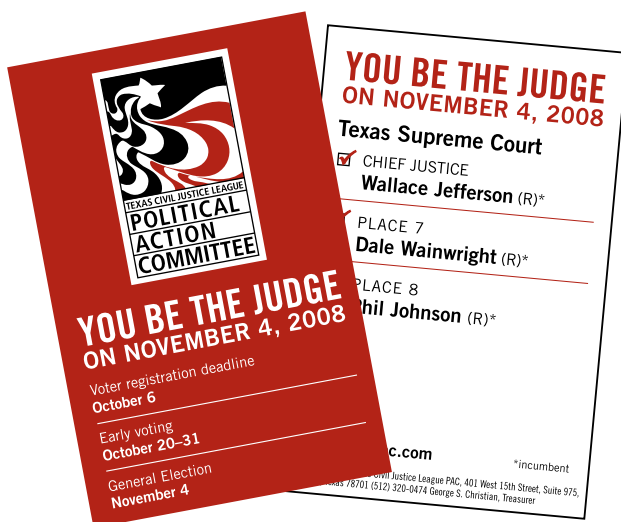
Watch List

1. Madison County, Illinois
2. St. Clair County, Illinois
3. Hillsborough County, Florida
4. Northern New Mexico
5. Delaware
6. California



Texas Civil Justice League PAC Marks 20th Anniversary

The Texas Civil Justice League PAC has helped elect qualified candidates to the state's highest courts and legislature since 1988. From the courthouse to the statehouse, personal injury trial lawyers and their "front groups" will wage a pitched battle for the hearts and minds of Texans this fall. The plaintiffs' bar needs judges and lawmakers who will roll back reform and return the state to its days as the "world's courtroom." Two decades of landmark legal reform is in jeopardy. If they win, Texas loses.



There's plenty at stake in 2008.

Texas voters will go to the polls November 4, 2008, to decide:

Three places on the Texas Supreme Court, including the chief justice

Nineteen places on Courts of Appeal, including seven chief justices

Fifteen seats in the thirty-one member Texas Senate

All 150 seats in the Texas House of Representatives

The statewide judicial slate card program is one of the most effective tools for voter education. The PAC slate cards provide endorsements in races for the Texas Supreme Court and Courts of Appeals. For more information or to order slate cards, contact Carol Sims (512-320-0474 or carol@tcjl.com).

What can you do to elect fair-minded judges and pro-business legislators? Join the Texas Civil Justice League PAC and get involved today. Just fill out and return the reply form on the back cover of this publication.



Join the Texas Civil Justice League

Established in 1986, the Texas Civil Justice League:

- is a non-partisan, statewide business coalition committed to legal reform and public policy research.
- thwarted efforts to rollback business liability and legal reform during the 2007 legislative session by defeating sweeping anti-indemnity and qui tam (false claims) bills and proposals that threatened consolidated insurance programs.
- is laying the groundwork for the 2009 legislative session. Policy committees will make recommendations in vital issue areas, such as construction liability, courts, general business liability, mass torts, and products liability. In addition, the Texas Civil Justice League's grassroots and political outreach efforts will impact legislative and judicial races by keeping business issues in the forefront of this year's campaigns.
- cost-effectively extends the benefits of corporate legal departments by monitoring court rulings and legislation and alerting members to challenges that threaten the state's judicial system.
- is the state's oldest and most effective legal reform organization. Business leaders and former legislators founded the Texas Civil Justice League to enact recommendations issued by the 1987 House/Senate Joint Committee on Liability Insurance and Tort Law Procedure.
- takes fiscal responsibility seriously, leveraging membership dues into meaningful, long-term reform.
- works within an economical budget, spending significantly less than comparable statewide organizations.
- is the only statewide legal reform coalition governed by a board of directors composed of business leaders and association representatives.
- works closely with business and professional trade associations to achieve mutual public policy objectives.
- actively seeks and incorporates members' input into legislative proposals.
- is a national leader in the lawsuit reform movement and has assisted in the organization of similar state groups in Georgia, Illinois, New York, and Pennsylvania.
- is a charter member of the American Tort Reform Association and collaborates with other national groups, including the American Justice Partnership, Civil Justice Reform Group, and the U.S. Chamber of Commerce's Institute for Legal Reform.

**For membership information, please contact
Kate Doner (512-476-4403 or kate@tcjl.com).**

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08-08