

TEXAS
CIVIL
JUSTICE
LEAGUE

JOURNAL



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- 6 Texas tops Fortune 500 HQs
- 10 Science v. Speculation
- 17 Texas liability system improves

TEXAS CIVIL JUSTICE LEAGUE JOURNAL

Summer 2010

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On the cover: Voting pad on State Representative Chris Turner's (D-Arlington) desk in the Texas House Chamber. An electronic voting system was first used in the House Chamber during the 1920s. The current voting boards at the west end of the Chamber were first installed ca. 1978.

Visit the State Preservation Board online at <http://www.tspb.state.tx.us>.

Texas Civil Justice League

More jobs, not lawsuits

Since 1986, the Texas Civil Justice League has led the fight to create a strong business climate by restoring fairness and stability to the state's civil justice system.

For more information, contact the Texas Civil Justice League, 400 West 15th Street, Suite 1400, Austin, Texas 78701, 512-320-0474, 512-474-4334 fax, or info@tcjl.com.

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The TCJL Journal is funded by a communications grant from the American Justice Partnership.



Front Matter

Texas is the best state for business.

The Lone Star State topped CNBC's fourth annual *America's Top States for Business* study released in July. Texas ties California for the most Fortune 500 company headquarters this year at fifty-seven each, followed by New York with fifty-six. *Chief Executive* magazine gave Texas top honors again in its 2010 "best states" for business rankings, pointing out that the state is the world's 12th largest economy and "is where 70 percent of all new US jobs have been created since 2008." And a March 2010 *Forbes* article said, "If any state is a poster child for economic recovery, it's Texas."

The good fortune is no accident. The Texas economy has weathered the worst of the economic downturn because of a legal, regulatory and tax environment that encourages business expansion and investment. State lawmakers have sent a message: more jobs, not lawsuits.

The Texas economy has weathered the worst of the economic downturn because of a legal, regulatory and tax environment that encourages business expansion and investment. State lawmakers have sent a message: more jobs, not lawsuits.

However, dark clouds are forming on the horizon. The Texas legislature faces daunting tasks when it convenes in five months. State leaders are predicting an \$18 billion budget shortfall—plus redistricting and sunset bills for numerous state agencies. Predictably, legal reform will come under attack as personal injury trial lawyers try to expand business liability and rollback more than two decades of landmark legislation.

Since 1986 the Texas Civil Justice League's objective has not changed – more jobs, not lawsuits. And now, nearly a quarter-century later, that hard work has paid off. Texas is a bellwether for business liability and legal reform.

But people have short memories. Since the legislative session ended last year, I've thought a lot about that old saw of people forgetting history being doomed to repeat it. Few lawmakers are left that served during the 1980s when the state's civil justice system was described as the "world's courtroom." And it has been almost as long since the Supreme Court was dominated by the plaintiffs' bar. As a leading national legal reform proponent remarked after a recent interim legislative hearing, "Texas is only one session away from undoing everything."

"Texas is only one session away from undoing everything."

The Texas Civil Justice League heads into the 2011 legislative session and its silver anniversary with the same commitment and vigor. Why do we care? Because we want Texas to always be the best state for business and medicine, jobs and prosperity.

I hope you find this issue of the Texas Civil Justice League *Journal* informative and useful. Your comments and suggestions are always welcome. Call me at the office (512-320-0474) or send an e-mail message (cary@tcjl.com).

Cary Roberts
Vice President/Communication and Policy

Please note the new net box for additional online resources throughout the *Journal*.

For the latest business liability, legal reform and state economic news, visit tcjl.com. Follow the Texas Civil Justice League on Twitter at twitter.com/tcjl86.

Parsley named president of the Texas Civil Justice League

Lee Parsley, a board-certified civil appellate lawyer and leading legal reform advocate, became the president and general counsel of the Texas Civil Justice League earlier this summer. He succeeds Dr. George S. Christian, who led the statewide business liability and legal reform coalition since March 2007.

“I am honored to lead the Texas Civil Justice League,” Parsley said. “Legal reform has been a cornerstone of the state’s robust business climate, which has withstood the worst of the global economic crisis. As the state’s first business liability and legal reform coalition, the League has done much to contribute to that vitality.”

“The Texas Civil Justice League is a public policy leader in business and economic issues,” Parsley added. “I look forward to building on that tradition as we get ready for next year’s legislative session. State lawmakers will face a fragile economic recovery, and we must not abandon the legal, regulatory, and tax policies that have encouraged business expansion and investment. Texas needs more jobs, not lawsuits.”

Parsley is a graduate of Texas Tech University and its School of Law. He has been the counsel for Texans for Lawsuit Reform and is widely published on civil justice public policy and trial court procedures. The Texas Supreme Court appointed Parsley to a six-year term on the Texas Board of Law Examiners in September 2007. He is a fellow of the Texas Bar Foundation and a member of the State Bar of Texas litigation and appellate sections, and he serves on the Texas Tech University School of Law Foundation board of directors.

“Lee Parsley is a legal scholar who has distinguished himself as an advocate for Texas business,” said Robert L. Looney, chairman of the Texas Civil Justice League executive committee and president of the Texas Oil and Gas Association. “Under his direction, the Texas Civil Justice League will continue to be a national leader in legal reform.”

“There is no one better to lead the Texas Civil Justice League as its silver anniversary approaches,” Christian, outgoing president and general counsel, said. “Lee Parsley has the in-

tegrity, intellect, and respect to champion sound civil justice policy at the state capitol.”

“Lee Parsley has a solid reputation as a hardworking and insightful lawyer,” said Ralph Wayne, former president of the Texas Civil Justice League and chairman emeritus of the American Tort Reform Association. “He will be a valuable voice for legal reform in Texas and a great partner with his colleagues throughout the United States.”



In his first official act as president of the Texas Civil Justice League, Lee Parsley signs letters to House Judiciary and Civil Jurisprudence Committee members before an interim hearing on evidence standards in mesothelioma personal injury lawsuits. Parsley succeeded Dr. George S. Christian as president and general counsel in May 2010. The League moved upstairs to the fourteenth floor of 400 West 15th Street, which means President Parsley now has an office, instead of having to work out of a crowded conference room.



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 2009 legislative session. Not a single trial lawyer bill passed both houses, and most stalled in committee. Lawmakers agreed that economic recovery and job creation depend upon a legal and regulatory environment that encourages business expansion and investment.
- is already laying the groundwork for the 2011 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.
- 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
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COMMFAB

Communication and legislative strategies for business liability and legal reform

Texas Medical Association | Thompson Auditorium | Austin, Texas | March 3, 2010

Texas Oil and Gas Association | Austin, Texas | October 8, 2009



(1) More than a hundred Texas Civil Justice League members and statewide business coalition representatives attended COMMFAB V, March 3, 2010. COMMFAB is the Texas Civil Justice League's semi-annual communications and legislative strategies conference.

(2) Political consultant and pollster Bryan Eppstein analyzes statewide primary election results at COMMFAB V, March 3, 2010.

(3) State Representative Todd Hunter (R-Corpus Christi), chairman of the House Judiciary and Civil Jurisprudence Committee, discusses 2010 interim legislative hearings and the outlook for 2011. Hunter holds a copy of the American Tort Reform Foundation's latest Judicial Hellholes® report.



(4) Richard Faulk, partner and chair of the litigation department at Gardere Wynne Sewell LLP (Houston), reports on his trip to Copenhagen, Denmark, for the U.N. Climate Change Conference in December 2009. Faulk co-chairs the Texas Civil Justice League's climate change policy committee.

(5) Texas Civil Justice League board member Bill Oswald of Koch Industries Inc. visits with Christina Wisdom, vice president and general counsel of the Texas Chemical Council, at COMMFAB V.



(6) Chief Justice Wallace Jefferson of the Texas Supreme Court discusses judicial selection reform and recent campaign finance rulings by the U.S. Supreme Court.

(7) Ed Pickle receives a copy of the Texas Senate resolution honoring his contributions to legal reform from Ralph Wayne, former president of the Texas Civil Justice League and chairman emeritus of the American Tort Reform Association. Pickle serves on the League's executive committee.



(8) COMMFAB IV was held October 8, 2009, at the Texas Oil and Gas Association. Nearly a hundred Texas Civil Justice League members and statewide business coalition representatives attended. Texas Oil and Gas Association president Robert L. Looney is chairman of the Texas Civil Justice League's board of directors.

(9) Stephanie Simpson, regional vice president of BIPAC and executive director of the Texas Prosperity Project, shares a laugh with Dan Pero, president of the American Justice Partnership, at COMMFAB IV.



(10) State Representative Todd Hunter (R-Corpus Christi), chairman of the House Judiciary and Civil Jurisprudence Committee, visits with Texas Association of Counties general counsel Robert Lemens and legislative liaison Paul Sugg.



(11) Dr. George S. Christian, former Texas Civil Justice League president, gives an overview of 2009 legislative accomplishments. Christian served as the organization's president from 2007–2010. He and his father, the late George E. Christian, helped build the Texas Civil Justice League into the prominent public policy organization it is today.

(12) Jay Gibson, counsel for The Dow Chemical Company, reviews 2009 indemnity and statutory employer legislation. Gibson co-chairs the Texas Civil Justice League's indemnity policy committee.



(13) Cary Roberts, Texas Civil Justice League vice president for Communication and Policy, opens the COMMFAB IV meeting with a discussion of interim communication strategies. Roberts, who served as executive director of the League's Judicial Education Alliance in the early 1990s, returned to the organization in 2000.

(14) Matt Fullenbaum, the American Tort Reform Association's director of legislation, briefs COMMFAB IV participants on national legal reform developments. The Texas Civil Justice League is one of the American Tort Reform Association's founding state coalition partners.

(15) Former state representative Carter Casteel, who served as the Texas Civil Justice League's legislative counsel in 2007 and 2009, visits with Carol Sims, the organization's vice president and political action committee director.



(16) Kevin Robnett, representing Texas House Speaker Joe Straus, talks with Cary Roberts and Dr. George S. Christian of the Texas Civil Justice League.

(17) Stewart Jarmon and Mary Tipps of Texans for Lawsuit Reform attended COMMFAB IV in October 2009. Texans for Lawsuit Reform was founded in the mid-1990s and has played a leading role in improving the state's civil justice system.



(18) Carol Sims and Kate Doner of the Texas Civil Justice League flank Matt Fullenbaum of the American Tort Reform Association. Fullenbaum, based in Washington, D.C., has become the Texas group's "favorite yankee" and a devotee of Salt Lick barbecue.

Texas tops Fortune 500 HQs list again

For the third consecutive year, Texas is the home of the most corporations in the Fortune 500. But this year Texas shares the top spot with California as both states claim fifty-seven of the top 500 in the magazine's "annual ranking of America's largest corporations." New York is third with fifty-six. Texas also led in 2009, 2008 and 2006, and New York led in 2007.

Irving-based Exxon Mobil, which was ranked number one among individual corporations in 2009 in the Fortune 500, lost its leadership in 2010 to Walmart Stores of Bentonville, Arkansas, and is now ranked number two. Texas has three of the top ten, including ConocoPhillips (6), with headquarters in Houston, and AT&T (7), with headquarters in Dallas. California has two of the top ten—Chevron (3) and Hewlett-Packard (10).

Other states in the latest top ten are Illinois (31), Pennsylvania (25), Ohio (23), Minnesota (21), Virginia (20), Michigan (18) and New Jersey (18). The 2010 Fortune 500 was published in the May issue of the magazine.

Texas Rank	Company	Fortune 500 Rank	Revenues (\$ millions)	Number of Employees
1	Exxon Mobil Irving	2	284,650.00	102,700
2	ConocoPhillips Houston	6	139,515.00	30,000
3	AT&T Dallas	7	123,018.00	282,720
4	Valero Energy San Antonio	26	70,035.00	20,920
5	Dell Round Rock	38	52,902.00	95,150
6	Marathon Oil Houston	41	49,403.00	28,855
7	Sysco Houston	55	36,853.30	47,000
8	Enterprise GP Holdings Houston	92	25,510.90	4,800
9	Fluor Irving	111	21,990.30	36,152
10	AMR Fort Worth	120	19,917.00	78,900
11	Kimberly-Clark Irving	126	19,115.00	56,000
12	Plains All American Pipeline Houston	128	18,520.00	3,400
13	United Services Automobile Assn. San Antonio	132	17,557.60	21,695
14	J.C. Penny Plano	133	17,556.00	154,000
15	Tesoro San Antonio	139	16,589.00	5,500
16	Halliburton Houston	158	14,675.00	51,000
17	Burlington Northern Santa Fe Fort Worth	167	14,016.00	37,363
18	National Oilwell Varco Houston	182	12,712.00	34,613
19	Continental Airlines Houston	183	12,586.00	39,640
20	KBR Houston	193	12,105.00	51,000

Texas Rank	Company	Fortune 500 Rank	Revenues (\$ millions)	Number of Employees
21	Waste Management Houston	196	11,791.00	43,400
22	Dean Foods Dallas	208	11,158.40	27,157
23	Texas Instruments Dallas	223	10,427.00	26,584
24	Southwest Airlines Dallas	229	10,350.00	34,726
25	Baker Hughes Houston	243	9,664.00	34,400
26	Energy Future Holdings Dallas	246	9,546.00	9,030
27	Tenet Healthcare Dallas	253	9,215.00	50,411
28	Gamestop Grapevine	255	9,078.00	32,081
29	XTO Energy Fort Worth	258	9,064.00	3,335
30	Anadarko Petroleum The Woodlands	260	9,000.00	4,300
31	Apache Houston	271	8,641.80	3,452
32	Centerpoint Energy Houston	275	8,281.00	8,810
33	Smith International Houston	277	8,218.60	21,931
34	Whole Foods Market Austin	284	8,031.60	47,750
35	Kinder Morgan Houston	315	7,185.20	7,931
36	Pilgrim's Pride Pittsburg	317	7,113.80	41,240
37	Commercial Metals Irving	327	6,883.40	13,586
38	Western Refining El Paso	330	6,807.40	3,300
39	Calpine Houston	338	6,564.00	2,046
40	Affiliated Computer Services Dallas	341	6,523.20	74,000
41	Enbridge Energy Partners Houston	364	5,905.40	2,000
42	CC Media Holdings San Antonio	376	5,551.90	19,295
43	Dr Pepper Snapple Group Plano	378	5,531.00	19,000
44	Energy Transfer Equity Dallas	388	5,417.30	5,581
45	Cameron International Houston	399	5,223.20	18,100
46	Celanese Dallas	414	5,082.00	7,400
47	Atmos Energy Dallas	424	4,969.10	4,691
48	Holly Dallas	431	4,834.30	1,632
49	EDG Resources Houston	434	4,787.00	2,100
50	Spectra Energy Houston	437	4,725.00	5,400
51	El Paso Houston	447	4,631.00	4,991
52	Group 1 Automotive Houston	457	4,525.70	6,990
53	FMC Technologies Houston	467	4,405.40	10,400
54	Flowserve Houston	473	4,365.30	15,000
55	RadioShack Fort Worth	481	4,276.00	35,750
56	Frontier Oil Houston	488	4,237.20	843
57	Blockbuster Dallas	500	4,161.80	36,500
			1,235,398.10	1,866,551

Rich states, poor states

American Legislative Exchange Council-Laffer State Economic Competitiveness Index

Texas ranks third in the U.S. in economic performance – easily outpacing the nation’s other most populous states – and 19th in economic outlook, according to *Rich States, Poor States*, a 2010 state economic competitiveness index from the American Legislative Exchange Council (ALEC).

The 2010 index is the third edition of the ALEC-Laffer research findings, which are intended to “help lead to the enactment of pro-growth economic policies in all 50 state capitals.”

States are struggling because of the global economic downturn and an “unprecedented buildup in the size of state budgets,” according to the 2010 ALEC-Laffer report written by Dr. Arthur B. Laffer, Stephen Moore and Jonathan Williams. For fiscal year 2010, states faced budget deficits totaling \$108.7 billion, and for fiscal years 2011–2012 states are expected to face additional budget gaps totaling \$117.2 billion. Last year 29 states raised taxes and fees by nearly \$24 billion.

The ALEC-Laffer report warns that “state rainy-day funds were heavily utilized to reduce cuts in fiscal 2010 budgets, but those funds are quickly being emptied,” and the authors argue that the federal economic stimulus “has been (and will continue to be) a net negative for state economies and state budgets.”

A complete copy of the 2010 ALEC-Laffer report, *Rich States, Poor States*, is available at www.alec.org.

Texas

3

2010 Economic Performance Rank

(1=best, 50=worst)

A historical measure based on a state’s performance (equally weighted average) in the three variables listed below. These variables are highly influenced by state policy.

7

Non-farm payroll employment

Cumulative growth 1998–2008
18.7%

26

Personal income per capita

Cumulative growth 1998–2008
46.1%

19

2010 Economic Outlook Rank

(1=best, 50=worst)

A forecast based on a state’s standing (equally weighted average) in the 15 state policy variables listed below. Data reflect state+local rates and revenues and any effect of federal deductibility.

3

Absolute domestic migration

Cumulative 1999–2008
735,816

Historical ranking comparison

Economic outlook rank
2008 13
2009 10

Texas

2010 ALEC-Laffer State Economic Competitiveness Index

Variable	Data	2010 Rank
Top marginal personal income tax rate	0.00%	1
Top marginal corporate income tax rate	5.56%	14
Personal income tax progressivity (change in tax liability per \$1,000 of income)	\$0.00	2
Property tax burden (per \$1,000 of personal income)	\$40.18	40
Sales tax burden (per \$1,000 of personal income)	\$29.74	36
Remaining tax burden (per \$1,000 of personal income)	\$19.45	30
Estate/inheritance tax levied	No	1
Recently legislated tax changes (2008 and 2009, per \$1,000 of personal income)	-\$2.59	17
Debt service as a share of tax revenue	10.6%	48
Public employees per 10,000 of population (full-time equivalent)	563.5	27
State liability system survey (tort litigation treatment, judicial impartiality, et cetera)	56.8	41
State minimum wage (federal floor is \$7.25)	\$7.25	1
Average workers compensation costs (per \$100 of payroll)	\$2.61	34
Right-to-work state? (option to join or support a union)	Yes	1
Number of tax or expenditure limits (0=least/worst, 3=most/best)	1	13

Top Ten State Economic Performance Rankings, 1998–2008

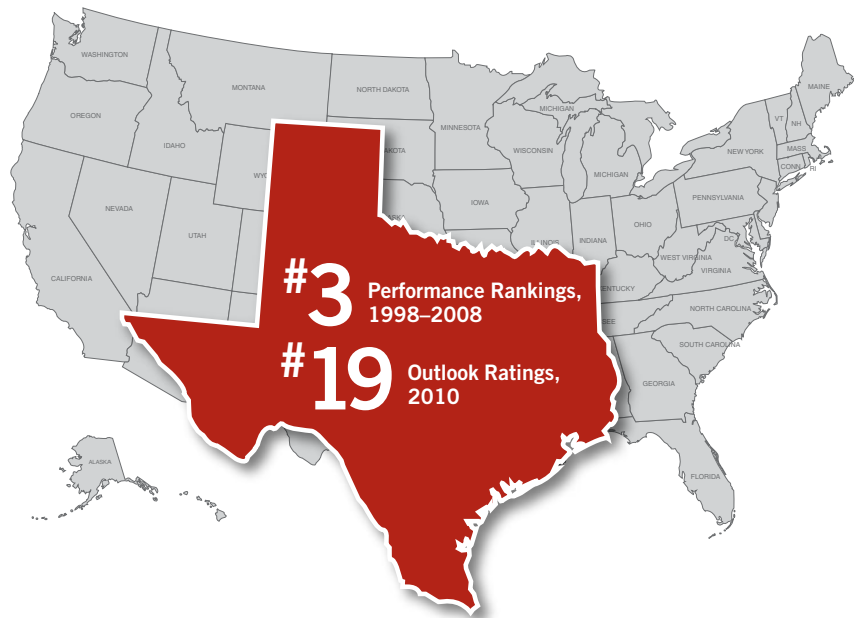
- 1 Wyoming
- 2 Montana
- 3 Texas**
- 4 Virginia
- 5 New Mexico
- 6 Florida
- 7 Oklahoma
- 8 Arizona
- 9 Alaska
- 10 Idaho

Top Ten State Economic Outlook Ratings, 2010

Based upon equal-weighting of each state's rank in 15 policy variables

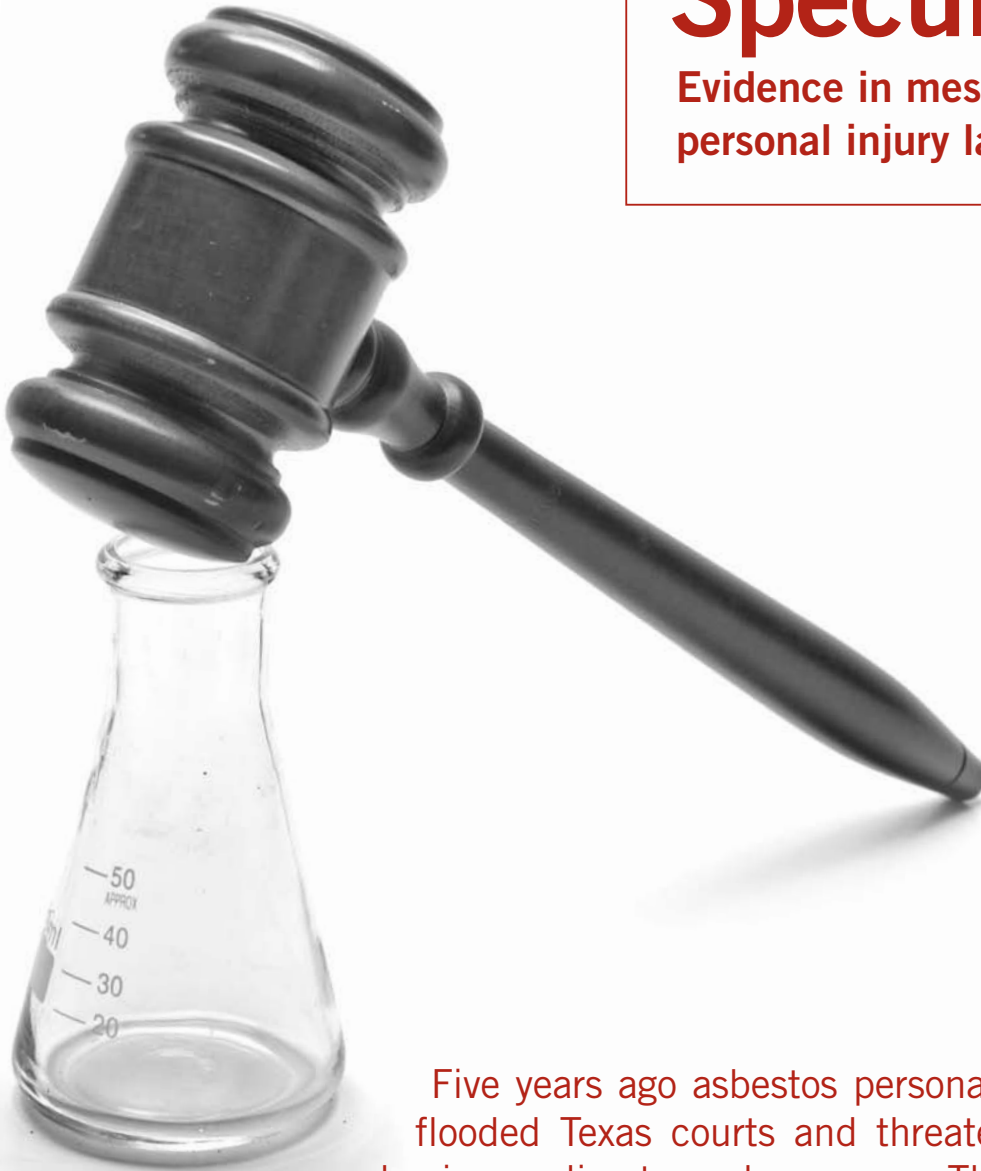
- 1 Utah
- 2 Colorado
- 3 Arizona
- 4 South Dakota
- 5 Florida
- 6 Wyoming
- 7 Idaho
- 8 Virginia
- 9 Georgia
- 10 Tennessee

(Texas ranks 19th.)



Science v. Speculation

Evidence in mesothelioma personal injury lawsuits



Five years ago asbestos personal injury lawsuits flooded Texas courts and threatened the state's business climate and economy. The Texas legislature responded by enacting landmark litigation reform (SB 15 by Janek) that established medical criteria for filing asbestos and silica cases. The law ensured legitimately sick people got priority at the courthouse and eliminated mass filings. Passed unanimously by both the Texas House of Representatives and Senate, that legislation dealt with the most flagrant abuses in asbestos-related lawsuits and helped restore fairness to the state's civil justice system.

Another proposal, pursued during the 2009 legislative session, threatens to tip the balance once again by substituting speculation for science. Two influential lawmakers filed legislation last year (SB 1123 by Duncan, HB 1811 by Eiland) seeking to undo a unanimous 2007 Texas Supreme Court ruling by exempting asbestos-related mesothelioma lawsuits from the requirement to provide scientifically-supported evidence of exposure. Reversing the court's decision would make it impossible for Texas businesses to escape from lawsuits where there is no evidence that they caused the plaintiff's impairment.

“[A] fundamental principle of traditional products liability law is that the plaintiff must prove that the defendants supplied the product which caused the injury.” *Gaulding v. Celotex Corp.*, Texas Supreme Court, 1989

The Texas civil justice system has long embraced the essential standard that a jury should not rely on guesswork when it comes to a defendant's liability. “[A] fundamental principle of traditional products liability law is that the plaintiff must prove that the defendants supplied the product which caused the injury.” (*Gaulding v. Celotex Corp.*, Texas Supreme Court, 1989)

Texas courts have also recognized the basic premise that sound science must underlie proof of causation in toxic tort cases (e.g., *Merrell Dow Pharmaceuticals, Inc. v. Havner*, Texas Supreme Court, 1997) because without such evidence a jury is reduced to guessing.

Following a long line of cases addressing sound scientific requirements, the Texas Supreme Court in 2007 ruled unanimously (*Borg-Warner Corp. v. Flores*) that a plaintiff claiming an asbestos-related injury must provide scientifically reliable evidence regarding the dose – or amount – of the product that allegedly caused his or her disease. This ruling was nothing more than a continuing rejection of guesswork in Texas courtrooms.

No one, except personal injury trial lawyers, wants a return to the days when Texas was the world's courtroom.

Allowing the legislature to undo the *Borg-Warner* decision by eliminating proof of an actual, harmful dose ignores years of jurisprudence regarding sound scientific evidence, overrides state courts, and will have grievous consequences for product liability cases. If personal injury trial lawyers and their allies undermine scientific evidence in asbestos-related mesothelioma cases, fundamental standards for other complex product liability cases will be next.

No one, except personal injury trial lawyers, wants a return to the days when Texas was the world's courtroom.

SCIENCE

Scientific standards recognized by the Texas Supreme Court are accurate and reliable. Repealing *Borg-Warner* reopens the floodgates to meritless lawsuits and undermines Texas court decisions that eliminated junk science.

Why would Texas replace scientific evidence with guesswork? Personal injury trial lawyers want to replace modern dose evidence with an obsolete, 24-year-old standard of “guessing,” without any proof, that every exposure is a cause, no matter how small. It's as backwards as refusing to allow DNA evidence in criminal cases.

Asbestos and related fibers are among the most studied toxins worldwide. Scientists have reported extensively on the dosage necessary to cause asbestos-related disease, including mesothelioma.

Dose matters. Scientific studies agree that mesothelioma is a dose-responsive disease and that not every dose causes disease. Even plaintiffs' experts agree that background doses are not a cause of disease, but they still want to create liability for every occupational exposure, no matter how low, and without estimating any dose.

LAW

Personal injury trial lawyers are asking for a radical departure from current law by eliminating scientifically sound evidence in asbestos-related mesothelioma cases.

There is no reason in jurisprudence or science to exempt asbestos cases generally, or mesothelioma cases in particular, from the basic requirements that apply to all other toxic tort cases in the state.

Borg-Warner does not create a new causation standard; it only clarifies that the “substantial factor” test is applicable in asbestos lawsuits just like it is in other Texas tort cases, and it provides guidance about what is necessary to fulfill existing evidence standards.

Borg-Warner has not barred anyone from the courthouse. Plaintiffs are free to file and proceed with their cases in Texas. *Borg-Warner* just makes sure that asbestos verdicts are supported by the same scientific evidence as any toxic tort case tried in Texas courts.

Borg-Warner is not a legal outlier. More than a dozen courts in multiple jurisdictions across the country have rejected obsolete evidence standards and ruled that proof of dose is necessary in asbestos cases. Many other state and federal cases require evidence of dose, just like *Borg-Warner*. Evidence of dose sufficient to cause disease is, in fact, the most fundamental principle of toxicology and the standard for most tort cases throughout the country.

PLAINTIFFS

As a general rule, plaintiffs in mesothelioma cases have the most valuable personal injury claims.

Personal injury lawyers cannot document a single case of a mesothelioma sufferer with occupational exposure being denied recovery either through verdicts or settlements obtained in Texas courts or payments from asbestos trusts.

Experienced MDL litigators in Texas are not aware of any mesothelioma cases set for trial since 2007 where the plaintiff did not settle or recover damages as a result of the dose evidence standard established in *Borg-Warner*.

Since *Borg-Warner*, plaintiffs have continued to file mesothelioma cases in the Texas multi-district litigation court. The judge has applied *Borg-Warner* to eliminate some defendants and allow these cases to proceed against others. There has been no “elimination” of asbestos litigation, only a winnowing down so cases with real exposure proceed and others do not.

DEFENDANTS

Mesothelioma cases, like most asbestos claims, are filed against large groups of defendants; more than 60 companies are frequently named in a lawsuit.

Without the sound scientific evidence requirements of *Borg-Warner*, scores of defendants will be required to defend themselves against mesothelioma claims for which they may have no responsibility.

Defendants who do not belong in lawsuits will incur unnecessary legal costs and be forced to pay significant sums to settle claims.

Exempting mesothelioma claims from the dose evidence required by *Borg-Warner* will result in many more business bankruptcies, costing jobs and aggravating an already dangerous economic situation.

LEGAL AND LEGISLATIVE TIMELINE

- 1986** **Lohrmann v. Pittsburgh Corning Corp.** 4th Circuit/Maryland Federal Court
Required “evidence of exposure to specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked.”
-
- 1989** **Gaulding v. Celotex Corp.** Texas Supreme Court
Plaintiff must prove defendants supplied the product that caused the injury.
-
- 1990** **Celotex Corp. v. Tate Corpus Christi** Court of Appeals
Dismissed by agreement after settlement. Causation is presumed if plaintiff proves “any exposure” to asbestos.
-
- 1997** **Merrell Dow Pharmaceuticals, Inc. v. Havner** Texas Supreme Court
Specific causation and general causation must be shown. Injured person must show that the “dose or exposure levels” experienced were comparable to or greater than levels in reliable epidemiological studies.
-
- 2003** **HB 3**
Comprehensive legal reform legislation created a multi-district litigation panel to consolidate cases. Joint and several liability applies only if defendant is more than 50 percent liable, otherwise defendant pays its percentage. Expands responsible third party practice so non-parties can be allocated a percentage of responsibility.
-
- 2005** **SB 15**
Established medical criteria for asbestos and silica claims and required a showing of impairment for non-malignancy claims. Permitted transfer of pending non-malignancy claims into the asbestos multi-district litigation court. Provided that asbestos cases cannot be consolidated for trial. Put mesothelioma cases at the front of the line for trial.
-
- 2007** **Borg-Warner v. Flores** Texas Supreme Court
Court found no evidence that *Borg-Warner* products were a substantial cause of plaintiff’s injury because of failure to introduce evidence of dose level. Stated sufficient evidence requires “defendant-specific evidence relating to the approximate dose to which the plaintiff was exposed” and evidence that the dose was a substantial factor in causing the asbestos-related disease.
-
- Georgia-Pacific Corp. v. Stephens** Houston Court of Appeals
Stephens did not demonstrate that the frequency and regularity of his alleged exposure to joint compound were comparable to or greater than the exposures in the epidemiological studies that supported causation. Court applied *Borg-Warner* in this mesothelioma case, and reversed and rendered judgment for Georgia-Pacific.
-
- 2010** **Smith v. Kelly-Moore Paint Co., Inc.** Fort Worth Court of Appeals
Court affirmed a no evidence summary judgment in favor of the paint company. Court found the plaintiff failed to present scientific evidence of the minimum exposure level of chrysotile asbestos that would increase the risk of mesothelioma. In the absence of an expert opinion with the factual and scientific foundation required by *Borg-Warner v. Flores*, there was no evidence of specific causation, and the summary judgment was affirmed.

The Texas Asbestos/Silica Statute: When the Legislature Found Justice

By George S. Christian

During Texas Governor Rick Perry's January 2005 State of the State address, he implored the legislature to "end Texas's status as the home of frivolous asbestos lawsuits."

Soon thereafter, U.S. District Judge Janis Graham Jack of the Southern District of Texas held a series of hearings to delve into how a handful of screening companies and physicians generated thousands of silica cases. Judge Jack's statement that there were "great red flags of fraud" summed up her extraordinary findings.

Nationwide, thousands of non-malignant asbestos and silica cases involving unimpaired claimants were generated by the same or similar practices as those Judge Jack lambasted. The resulting mass filings clogged court dockets and depleted scarce resources at the expense of claimants with actual lung function impairment. Mass filings by the unimpaired forced numerous businesses into settlements because of the extraordinary expense of litigating all of the cases. The result: scores of bankruptcies costing thousands of jobs and the devastation of workers' retirement plans.

Five years ago, Texas faced clear evidence that uninjured asbestos and silica claimants were clogging the state's court dockets and draining businesses' and courts' finite resources. Texas responded appropriately by setting objective and reasonable procedures to give priority to the sick.

Texas was hit hard, but responded to the crisis. Heeding Governor Perry's call, the Texas House of Representatives and Senate passed a silica and asbestos medical criteria statute that became effective September 1, 2005. Under the statute, plaintiffs who have a malignancy or can demonstrate lung

function impairment are given priority and can proceed to trial without having to compete with a mass of unimpaired plaintiffs for court time and defendants' resources. The claims of the non-sick are suspended and preserved so that these individuals may bring a lawsuit in the future should they become sick as a result of exposure to asbestos or silica.

The business community has also been well served by the statute. The statute places safeguards on non-malignant/unimpaired cases, helping to prevent the influx of sham cases Judge Jack rejected. These safeguards include requiring a legitimate diagnosis and compliance with American Medical Association lung function impairment guidelines, compliance with American Thoracic Society pulmonary function testing standards, and compliance with the International Labour Organization's system of classification of changes seen on x-rays.

While these protections might seem like simple common sense, the importance and impact cannot be overstated. Requiring legitimate diagnoses and compliance with well-established medical standards was all that was needed to thwart the sham cases that were generated by the same or similar practices appropriately rejected by Judge Jack.

On or before the September 2010 five-year anniversary of the statute, Judge Mark Davidson, the Texas multidistrict litigation judge for asbestos cases, and Judge Joseph Halbach, Jr., the recently appointed Texas multidistrict litigation judge for silica cases, are required to report to the governor, lieutenant governor, and speaker of the House of Representatives on several issues relating to the medical criteria statute. Their reports, however, should simply answer whether the medical criteria statute works and whether it will continue to work in the future.

Prior to the medical criteria statute, Texas's civil justice system was broken for sick asbestos and silica plaintiffs and the business community mainly as a result of mass filings by the uninjured. Now, with objective medical criteria standards applied to all such cases, the civil justice system is working much better. While thousands of claims by the uninjured remain inactive, the evidence demonstrates that this inactive status is appropriate for these cases. Cases involving plaintiffs with malignancies or lung function impairment are addressed by the courts first and forthright.

The impact of medical criteria on the silica docket caused a dramatic shift in the litigation. Due to the lack of incidence of silica-related malignancies, few silica-related malignancies or comparable disease type cases have been activated. Only one percent of the likely thousands of nonmalignant plaintiffs on the MDL silica docket have even tried to activate their cases. These numbers are phenomenal.

Since the medical criteria law went into effect almost five years ago, only about fifty-three plaintiffs have even sought to activate their cases, including only five plaintiffs in the last two years. Approximately twenty-one of those plaintiffs have been certified as meeting the statute's criteria. It is staggering that a very substantial majority of the plaintiffs on the silica MDL have remained inactive without even trying to activate their cases. On the other hand, the statute has been shown to work; almost half of the plaintiffs that have tried to have their cases activated have succeeded.

Of course, this has led to questions about why there is such a dearth of qualifying lawsuits. Is it because silica plaintiffs with inactive cases are not impaired, were never really diagnosed with a silica-related disease, or have reports that were generated by the same or similar unscrupulous screening practices confronted by Judge Jack? Or are there other reasons?

In April 2007 some of the MDL silica defendants tried to find out. Those defendants requested that plaintiffs with inactive cases produce the underlying medical reports supporting their lawsuits. These productions would have provided the information to assess why so many plaintiffs' cases remain inactive. The attorneys for those plaintiffs never produced that information. Nonetheless, defendants pieced together some information about those cases in order to shed light on why so many of those nonmalignant silica cases remain inactive.

First, defendants found hundreds, if not thousands, of inactive silica plaintiffs who appear to have also filed asbestos lawsuits or claims with asbestos-related bankruptcy trusts. Such dual claims are extraordinary. Judge Jack calculated that a golfer is more likely to hit a hole-in-one than an occupational medicine specialist is to find a single case of both silicosis and asbestosis. Thus, inactive silica plaintiffs who also have asbestos cases or claims may have reasonably decided that due to the glaring and obvious diagnostic contradiction that shocked Judge Jack, they cannot credibly pursue these silica cases with pending asbestos claims. As a result, they are content to leave these silica cases inactive.

Next, hundreds of plaintiffs appear to only have an x-ray interpretation consistent with silicosis, but no actual diagnosis of silicosis. An x-ray interpretation alone is insufficient to support an argument that someone has a specific dust disease illness such as silicosis. These plaintiffs' inability to obtain an

actual diagnosis in the many years since the medical criteria statute went into effect also may explain why so many cases remain inactive.

Further, defendants found that thousands of the inactive plaintiffs' cases have reports generated by a small pool of discredited or suspect screening companies and physicians. While it is problematic that a small number of screening companies and physicians generated so many of the Texas silica cases, it is simply astounding that some of these same screening companies and physicians were subject to Judge Jack's scathing order in the federal MDL. Even for those companies and physicians not subject to Judge Jack's order, it is quite possible that some of these individuals engaged in similar or other dubious practices.

While these plaintiffs evidently did not start out with medical reports to support activating their cases, after almost five years one would think that at least more than one percent would be able to meet the medical criteria. The fact that they have failed to do so is strong evidence that the medical criteria statute properly ferrets out cases with the same or similar practices identified and scrutinized by Judge Jack and that the medical criteria statute is working to keep illegitimate or questionable cases inactive, saving judicial and defendant resources for cases involving the truly sick.

On the asbestos issue, the medical criteria statute has also been a success story that has resulted in a complete transformation on the type of cases being actively litigated. Previously, plaintiffs suffering from malignant asbestos diseases competed with tens of thousands of uninjured claimants for the courts' and defendants' limited resources. Upon implementation of the medical criteria law in September 2005, plaintiffs with asbestos malignancy claims moved to the front of the line and more quickly resolved their lawsuits through settlement or trial.

For instance, nearly all of the likely thousands of nonmalignant asbestos cases either pending in 2005 or filed thereafter have remained inactive on the MDL court's docket with only a handful of such plaintiffs even trying to activate their cases. As a result, plaintiffs suffering from malignant asbestos-related diseases are able to seek justice more quickly. No one can credibly argue that the overall impact of the medical criteria statute has been anything but positive for sick plaintiffs or for defendants.

CONCLUSION

Five years ago, Texas faced clear evidence that uninjured asbestos and silica claimants were clogging the state's court dockets and draining businesses' and courts' finite resources. Texas responded appropriately by setting objective and reasonable procedures to give priority to the sick.

The medical criteria law has worked well. Malignant and non-malignant plaintiffs having an actual impairment now have proper access to the Texas courts, and the business community is able to take the huge sums of money that had been spent litigating or settling premature or frivolous cases and use those resources more productively to create jobs.

Later this year, Judges Davidson and Halbach will help guide the medical criteria statute's future. Hopefully, they will not advocate opening once again the floodgates by recommending activation of the thousands of questionable cases that remain inactive because the plaintiff cannot demonstrate a minimal level of asbestos-related or silica-related lung function impairment. That would turn back the clock to an old, unworkable civil justice system in Texas for asbestos and silica cases that cried out for the passage of the medical

criteria statute. As the saying goes, "If it ain't broken, don't fix it [again]."

A version of this article first appeared in LexisNexis® Mealey's™ Litigation Report Asbestos Volume 25, Issue 5, April 7, 2010.

George S. Christian was president of the Texas Civil Justice League from 2007–2010 and holds undergraduate, masters, doctoral, and law degrees from The University of Texas at Austin. He has practiced law in New York and Texas. He has been engaged primarily in legislative lobbying since 1986 with extensive involvement in health care, legal reform, public and higher education, state and local taxation, state finance, workers' compensation, and other business related public policy issues.

Excessive lawsuit costs for small businesses skyrocket

A study commissioned by the U.S. Chamber Institute for Legal Reform (ILR) concludes that small businesses play a central role in the health of the U.S. economy and should be protected from wasteful, excessive costs of the tort litigation system.

The ILR commissioned a study of the tort liability costs of small businesses by NERA Economic Consulting, which issued its report in July. The findings include:

The tort liability price tag for small businesses in America in 2008 was \$105.4 billion.

Small businesses bore 81% of business tort liability costs, but had only 22% of revenue.

Small businesses paid \$35.6 billion of their tort costs out-of-pocket instead of with insurance.

The authors of the report conclude that "Americans have a stake in protecting (small businesses) from the wasteful and excessive costs that are part of the tort litigation system. Meaningful, common sense reforms at the state and federal level should be considered and passed into law. Legislators should also be alert to pending legislation that could expand liability and harm small businesses."

NERA found that small businesses are "the engine of job growth in this country." They have generated 64 percent of

the net new jobs over the past fifteen years. At a time when unemployment rates are high, the ILR said that it is important to understand the burdens small businesses bear and to create an environment in which small businesses will thrive.

In the model used to predict future litigation costs for small businesses, the report says costs are expected to increase from the most recent figure available for 2008 of \$105 billion by three percent in 2009, four percent in 2010 and six percent in 2011.

The study also refers to a 2007 Harris poll of small business owners concerned about litigation. It found that 62 percent make business decisions to avoid lawsuits, and 61 percent reported that these decisions made their product or service more expensive. Of those who had been sued, 73 percent said their business suffered because the litigation was very time consuming.

A copy of the report is available at www.instituteforlegalreform.com.

Texas legal system “moving in the right direction”

Texas’ lawsuit climate ranks 36th in the nation, climbing five places from 2008 and moving toward the mainstream, according to a state legal system survey released this spring by the U.S. Chamber Institute for Legal Reform (ILR).

The Texas Civil Justice League credits state leaders, lawmakers and the Supreme Court with the marked improvement in national ranking. Texas ranked as low as 46th in the 2002 and 2003 surveys.

“Texas has made a number of key improvements in its lawsuit system, and so it is no surprise that the state has jumped 10 points in the Harris survey over the last eight years,” Lisa A. Rickard, ILR president, said. “Though issues of judicial fairness persist in pockets within the state, Texas’s legal climate is certainly moving in the right direction.”

“Texas has proven that legal reform fuels economic growth and expands access to health care.”

“Texas has proven that legal reform fuels economic growth and expands access to health care,” Cary Roberts, vice president for Communication and Policy at the Texas Civil Justice League, said. “The 2010 ILR/Harris survey results confirm that a balanced civil justice system encourages business expansion and investment.”

The 2010 survey was conducted by Harris Interactive Inc. It explored how reasonable and balanced U.S. business perceives state tort liability systems. Survey participants included 1,482 in-house general counsels, senior litigators or attorneys, and other senior executives. This is the eighth state liability survey commissioned by ILR since 2002.

Two-thirds (67 percent) of respondents said that the litigation environment in a state is likely to impact important business decisions at their companies.

Two-thirds (67 percent) of respondents said that the litigation environment in a state is likely to impact important business decisions at their companies, including where to locate, an increase from 63 percent in 2008 and 57 percent in 2007.

The state of Texas was singled out as having the worst specific city or county courts (34 percent), just ahead of California (33 percent). Problematic Texas jurisdictions mentioned by those surveyed included Beaumont (3 percent), East Texas (2 percent), Houston (2 percent) and Dallas (2 percent). The reason given most often (37 percent) for negative feelings about particular jurisdictions was biased or partial judges and juries.

The 2010 State Liability Systems Ranking Study is available at www.instituteforlegalreform.com.

State Liability Systems Ranking Study

#36 Texas 2010 Overall Ranking

Ratings on Key Elements of State Liability Systems (n=248)
The base (N) on each question is the total number of respondents answering that question.

		Grade	A	B	C	D	F	Ranking within element	Mean grade
Having and enforcing meaningful venue requirements	%		15	37	22	10	6	3.5	34
Overall treatment of tort and contract litigation	%		11	35	29	18	6	3.3	31
Treatment of class action suits and mass consolidation suits	%		7	21	24	10	6	3.2	23
Damages	%		8	28	30	19	10	3.0	34
Timeliness of summary judgment or dismissal	%		12	31	29	20	4	3.3	27
Discovery	%		7	44	31	12	5	3.4	29
Scientific and technical evidence	%		6	37	27	10	4	3.4	26
Judges' impartiality	%		7	35	34	16	7	3.2	43
Judges' competence	%		7	41	34	13	4	3.3	38
Juries' fairness	%		6	25	33	18	7	3.1	41
Overall state grade	%		7	38	33	17	6	3.2	

Overall Ranking of State Liability Systems*

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

* States listed as "best" had a total score exceeding 64.0, those listed as "moderate" had scores of 64.0 to 59.0, and those listed as "worst" had scores lower than 59.0.

US Chamber Institute for Legal Reform

10th Annual Legal Reform Summit

October 28, 2009 | Washington D.C.



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(1) Thomas J. Donohue, president and chief executive officer of the U.S. Chamber of Commerce, welcomes participants to the Institute for Legal Reform's 10th Annual Legal Reform Summit, October 28, 2009, in Washington D.C.

(2) Richard Faulk, partner and chair of the litigation department at Gardere Wynne Sewell LLP (Houston) and co-chair of the Texas Civil Justice League's climate change policy committee, participated in a panel discussion at the U.S. Chamber Institute for Legal Reform's 10th Annual Legal Reform Summit in October 2009.

(3) Faulk was joined by Donald G. Gifford, University of Maryland School of Law professor, in a panel on "Climate Change: The New Mass Tort for the 21st Century?" moderated by Paul E. Guttermann, a partner at Akin Gump Strauss Hauer & Feld LLP (Washington, D.C.).

(4) Jeb Bush, former governor of Florida, delivered the keynote luncheon address and moderated a panel discussion on lawsuits and rising healthcare costs at the 10th Annual Legal Reform Summit in Washington, D.C.

(5) Lisa A. Rickard, president of the U.S. Chamber Institute for Legal Reform, welcomes participants to the 10th Annual Legal Reform Summit, October 28, 2009, in Washington, D.C.

(6) US Senator Jeff Sessions (R-Alabama), ranking member of the Senate Judiciary Committee, received the Institute for Legal Reform's Legislative Achievement Award.

U.S. Tort Liability Index: 2010 Report

Pacific Research Institute and Manufacturers Alliance/MAPI, Inc.

Texas ranks just behind Oklahoma, which passed comprehensive tort reform legislation last year, in the overall input rankings and 18th in outputs, according to the Manufacturers Alliance/MAPI, Inc. and Pacific Research Institute's *U.S. Tort Liability Index: 2010 Report*.

The report "measures which states have relatively high tort costs and litigation risks (outputs) and which states have rules on the books (inputs) that, if implemented and enforced, reduce lawsuits and tort costs, resulting in a more balanced and predictable civil justice system."

The study says, "The state that has the best tort rules on the books – and that will be heading in the right direction if the rules are fully implemented – is Oklahoma, followed by Texas, Ohio, Colorado and Mississippi."

The study also recommends that Texans "might want to abandon partisan district elections to seat judges" to improve the state's tort liability system. "Litigation awards tend to be larger in states where judges are elected, especially if they are elected in partisan elections," the study adds.

The report finds "it is no accident that Oklahoma and Texas are first and second. Oklahoma's reforms were largely driven by the earlier reforms adopted in neighboring Texas. A state that reforms puts pressure on its neighbors to follow or be left behind in the competition to attract people and capital." The authors conclude that "neither state has reached tort nirvana. There is still room for improvement in all states, including those at the top."

Texas's mid-range output ranking is explained as an "interesting study in contradictions" because the state has "low tort losses for its size, but has the specter of great upside risk in individual cases due to its 'judicial hellholes' and runaway jury verdicts."

However, not all the news is bad. Texas is "47th in absolute tort losses because of its sheer size, but improves to 11th after we adjust for population and level of economic activity—an indication that Texas's reforms are making a difference."

In uncertain economic times, "an efficient tort liability system is an important ingredient for a thriving free-enterprise economy," Lawrence J. McQuillan and Hovannes Abramyan write in the report's second edition. "It ensures that businesses and individuals have proper incentives to produce safe products and provide safe services, and that true victims are fully compensated."

State liability systems rankings are important to business investment and economic growth. The study cites a recent McKinsey & Co. report that found, among executives surveyed, "litigation risks are very important in determining where to establish operations—second only to availability of qualified workers."

The report's findings conclude that "lawsuit reform can cut insurance premiums; increase productivity, employment, output, earnings, and the tax base; boost innovation and sales of new products; lower health care costs while improving health care access; and save lives."

The report's findings demonstrate the U.S. has the highest direct tort costs in the world "due to excessive litigation and lawsuit abuse," which "puts American companies at a disadvantage in global markets."

The lawsuit industry not only hampers economic competitiveness, but also amounts to "an annual 'excess tort tax' of about \$2,000 for each American." The current system is highly inefficient when it comes to compensating victims. A 2007 Pacific Research Institute study, *Jackpot Justice*, found that "less than 15 cents of every tort-cost dollar goes to damage awards."

The complete *U.S. Tort Liability Index 2010 Report* is available at www.pacificresearch.org.

2010 U.S. Tort Liability Index (1=best, 50=worst)

Outputs measures which states have relatively high tort costs and litigation risks.

Inputs measures rules on the books that, if implemented and enforced, reduce lawsuits and tort costs, resulting in a more balanced and predictable civil justice system.

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

2010 U.S. Tort Liability Index, Output Variables

Monetary tort losses

1. Private and commercial automobile-liability insurance losses/miles driven
2. Farm owners' multiple-peril (liability portion) insurance losses/dollar value of farm output
3. Commercial general-liability multiple-peril (liability portion) insurance losses/state GDP
4. Other general-liability insurance losses/state GDP
5. Homeowners' multiple-peril (liability portion) insurance losses/number of occupied housing units
6. Medical-malpractice insurance losses/projected personal health care expenditures
7. Product-liability insurance losses/state GDP
8. Personal self-insurance losses/state GDP
9. Commercial self-insurance losses/state GDP

Tort litigation risks

10. Number of jury-verdict awards in the 101 largest awards
11. Did the state have "judicial hellholes"?
12. Resident and active attorneys/million dollars of state GDP
13. Total state tort caseload/million dollars of state GDP

Personal injury lawsuit filings decline for fourth straight year

FY 2009 Annual Report for the Texas Judiciary

Office of Court Administration

The number of injury lawsuits—other than motor vehicle accidents—filed in state courts continues to decline, according to the latest Annual Report for the Texas Judiciary compiled by the Office of Court Administration.

Injury or damage suits other than motor vehicle cases have dropped 39 percent since 1987 and every year since 2005. Filings spiked in 2003 and again in 2005, likely due to last-minute filings before civil justice reform legislation took effect those years.

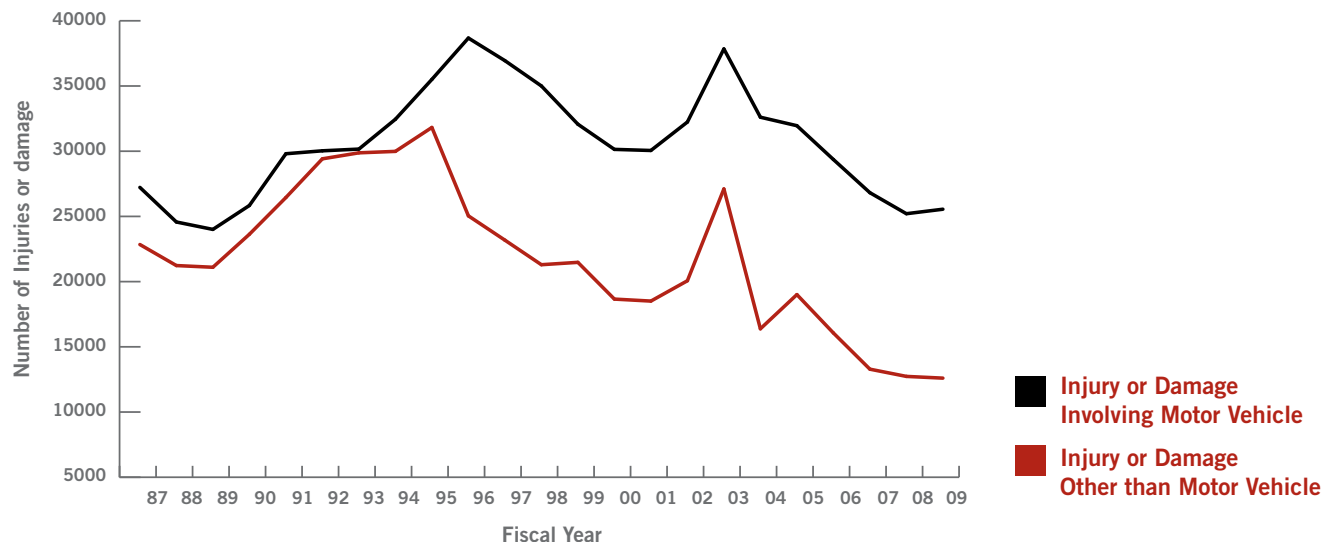
The caseload for both the Texas Supreme Court and the fourteen Courts of Appeal dropped slightly last year. The Supreme Court's clearance rates for regular causes and petitions for review continue to approach or exceed 100 percent. On average, 1,423 cases were added per year over the last 20 years, with a high of 1,672 cases added in 1992 and a low of 1,211 cases added in 2004.

The combined Courts of Appeal civil case clearance rate rose from 96.9 percent in 2008 to 102 percent in 2009. Over the past 20 years, the number of new filings in the courts of appeals increased 17 percent, from 8,062 new cases filed in 1990 to 9,470 filed in 2009. New filings reached a high of 11,566 in 1998, but have declined 18 percent since then. From 1990 to 2009, the average number of new cases filed per year was 10,127.

Texas had 3,334 elected or appointed judicial positions as of September 1, 2009, plus 129 associate judges and 280 former or retired judges eligible for assignment. The basic structure of the present court system was established by an 1891 constitutional amendment. Jurisdiction of the various levels of courts is established by constitutional provision and statute.

To view the complete FY 2009 and past reports online, visit <http://www.courts.state.tx.us/pubs/AR2009/toc.htm>.

New injury/damage cases filed in Texas courts 1987–2009



Fiscal Year	Injury or Damage Involving Motor Vehicle	Injury or Damage Other than Motor Vehicle
87	27098	23343
88	24823	21960
89	24336	21848
90	25908	24016
91	29309	26431
92	29502	28975
93	29615	29369
94	31575	29464
95	34196	31036
96	36913	25227
97	35428	23630
98	33764	22016
99	31250	22171
00	29596	19756
01	29523	19625
02	31393	20961
03	36199	26996
04	31710	17803
05	31152	20051
06	28931	17529
07	26749	15150
08	25368	14675
09	25663	14561
Change 90-09	-1%	-39%

Supreme Court Activity FY 2000–2009

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	10-Yr. Avg.
Regular Causes¹											
Added to docket	116	119	118	115	99	150	142	158	138	106	126
Disposed	111	118	112	101	109	136	133	144	164	125	125
Pending at end of year	61	63	62	79	75	88	93	106	80	62	77
Clearance rate	95.7%	99.2%	94.9%	87.8%	110.1%	90.7%	93.7%	91.1%	118.8%	117.9%	99.4%
Petitions for review											
Filed	1,069	1,018	986	968	810	805	897	831	825	835	904
Disposed:											
Granted	97	96	116	98	82	109	119	138	112	85	105
Other dispositions	966	1,020	885	875	709	714	703	781	762	702	812
Pending at end of year	328	329	314	317	332	353	431	344	301	351	340
Clearance rate	99.4%	109.6%	101.5%	100.5%	97.7%	102.2%	91.6%	110.6%	105.9%	94.3%	101.4%
Other writs and motions											
Filed	1,997	1,925	2,087	2,761	1,909	2,010	2,037	2,062	2,142	2,374	2,130
Disposed	2,011	1,877	2,117	2,775	1,788	2,031	1,985	2,098	2,188	2,335	2,121
Pending at end of year	139	199	187	186	308	295	352	315	268	141	239
Clearance rate	100.7%	97.5%	101.4%	100.5%	93.7%	101.0%	97.4%	101.7%	102.1%	98.4%	99.5%
Opinions written	180	139	165	128	122	136	145	170	212	165	156

Notes

1. *Regular causes* involve cases in which four or more of the justices have decided in conference that a petition for review, petition for writ of mandamus or habeas corpus, or parental notification appeal should be reviewed. Regular causes also include direct appeals the court has agreed to review and questions of law certified to it by a federal appellate court that the court has agreed to answer. Most regular causes are set for oral argument in open court and are reported in written opinions. However, a petition may be granted and an unsigned opinion (per curiam) issued without oral argument if at least six members of the court vote accordingly.

**Courts of Appeals Activity
FY 2000–2009**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	10-Yr. Avg.
Civil cases											
Cases added											
New filings	4,898	4,792	4,877	4,888	4,999	5,013	4,971	4,940	4,949	4,733	4,906
Other cases	279	347	343	351	326	378	419	378	353	408	358
Cases disposed	5,457	5,515	5,404	5,172	5,220	5,441	5,440	5,286	5,136	5,279	5,335
Cases pending at end of year	3,717	3,346	3,229	3,288	3,427	3,298	3,376	3,457	3,569	3,425	3,423
Clearance rate	105.4%	107.3%	103.5%	98.7%	98.0%	100.9%	100.9%	99.4%	96.9%	102.7%	101.3%
Avg. time between filing and disposition (months)	8.8	8.7	8.4	8.2	8.2	8.5	8.0	8.1	8.8	8.9	8.5
Avg. time between submission and disposition (months)	2.4	2.3	2.3	2.8	2.8	2.8	2.3	2.1	2.3	2.4	2.5

Top five counties in which appeals were filed (Fiscal Year 2009):

Civil cases	Criminal cases	Overall
Harris 9.2%	Harris 6.9%	Harris 16.1%
Dallas 6.8%	Dallas 6.3%	Dallas 13.1%
Tarrant 3.0%	Bexar 3.3%	Tarrant 6.2%
Travis 2.7%	Tarrant 3.2%	Bexar 5.8%
Bexar 2.5%	Jefferson 2.1%	Travis 4.1%

Texas Judicial Council adopts new civil cover sheet

A new civil case information sheet adopted by the Texas Judicial Council has been approved by the Supreme Court and will become effective September 1, 2010. The revised information sheet will provide more detailed data about the types of cases filed in state courts. The Texas Supreme Court adopted Texas Rule of Civil Procedure Rule 78a requiring that a case information sheet must accompany the filing of an original petition in a civil case and certain post-judgment motions under the Texas Family Code.

To view or download the new Texas civil case information sheet, visit <http://www.courts.state.tx.us/tjc/pdf/forms/CivilFamilyCoverSheet.pdf>.

According to data from the National Center for State Courts, the state salaries of state judges in Texas lagged behind the salaries of judges at corresponding levels in the five states closest to Texas in population.

Salaries of state judges in the six most populous states (as of July 1, 2009):

(listed in population order)

Judge	California	Texas	New York	Florida	Illinois	Pennsylvania
Chief Justice Court of Last Resort	\$228,856	\$152,500	\$156,000	\$157,976	\$201,819	\$191,876
Associate Justice Court of Last Resort	\$218,237	\$150,000	\$151,200	\$157,976	\$201,819	\$186,450
Chief Intermediate Court of Appeals	\$204,599	\$140,000 ² \$147,180 ³	\$148,000	\$150,077	\$189,949	\$181,349
Justice Intermediate Court of Appeals	\$204,599	\$137,500 ² \$144,810 ³	\$144,000	\$150,077	\$189,949	\$175,923
Judge General Jurisdiction Trial Courts	\$178,789	\$125,000 ² \$138,200 ³	\$136,700	\$142,178	\$174,303	\$161,850

Notes

1. Source: Knowledge and Information Services Division, National Center for State Courts, survey of judicial salaries as of July 1, 2009. The National Center for State Courts attempts to use actual salaries whenever possible. The data for each state will include local supplements whenever relevant and feasible.

2. Basic salary. Does not include supplements paid by counties.

3. Average statewide salary, including supplements paid by counties, as of October 1, 2009.

Top ten 2009 state court verdicts

Rank	Case	Date	County	Headlines	Total
1	Industrial Recovery Capital Holdings Co. v. Simmons	6/29/2009	Dallas	Minority shareholders said buyback price was unfair	\$178,700,000.00
2	Newman v. National Western Life Insurance Company	12/3/2009	Parker	Insurance agent stole portion of plaintiff's policy purchase	\$150,207,896.39
3	ADT Security Services, S.A. de C.V. v. Alert 24 Security, L.L.C.	10/14/2009	Webb	Plaintiff claimed defendants attempted to extort money	\$112,119,005.25
4	Tate v. Discover Property & Casualty Insurance Co.	12/1/2009	Bexar	Injured worker said insurer wrongfully withheld benefits	\$70,000,000.00
5	Shagrithya v. Martin	10/26/09	Dallas	Defendant had company retain earnings to plaintiff's detriment	\$67,806,732.00
6	Colombrito v. Basatneh	10/5/09	Dallas	Patient paralyzed after undergoing spinal tap	\$22,568,702.06
7	Enbridge Pipelines (East Texas) L.P. v. Avinger Timber LLC	1/20/09	Marion	Defense argued property was worth millions more than plaintiff said	\$20,955,000.00
8	Arias v. Degar Fuel Systems Inx.	4/23/2009	Harris	Lack of protection gear to blame for worker's two-foot fall	\$20,707,000.00
9	Wiles v. Ford Motor Company	5/8/2009	Dallas	Family alleged tire, SUV defects caused fatal rollover	\$20,439,581.85
10	Fitzgerald v. Holmes	4/23/09	Dallas	Man said he lost limbs due to doctors' failure to control infection	\$17,245,650.00

Based on cases reported by VerdictSearch, an affiliate of the Texas Lawyer. Verdicts are reported as issued after trial. The listings do not include whether post-trial motions or appeals have been decided or are pending.

2009 legislative session summary



The Texas Civil Justice League invoked Col. William Barrett Travis' "draw the line in the sand" of Alamo legend as its rallying cry to defend legal reform last year.

Given state and national political shifts and a reinvigorated plaintiff's bar, legal reformers expected to be playing defense in Texas. Scores of bills were filed that would have created new ways to sue. However, the Texas Civil Justice League and its allies were effective in persuading lawmakers that the state needed "more jobs, not more lawsuits."

Travis, an attorney himself, would have been proud when the final gavel fell. Every major personal injury trial lawyer-backed initiative failed in the Texas legislature's 81st regular session. Not a single trial lawyer bill passed both houses, and most stalled in committee. Lawmakers agreed that economic recovery and job creation depend upon a legal and regulatory environment that encourages business expansion and investment.

Founded in 1986, the Texas Civil Justice League is a statewide coalition working for business liability and legal reform.

Founded in 1986, the Texas Civil Justice League is a statewide coalition working for business liability and legal reform. Not surprisingly, personal injury trial lawyers and their allies would like to return to the days when Texas was the "world's courtroom." For nearly a quarter of a century, the League and its members have fought to bring the state's civil justice system into the national mainstream. The results are evident. Even in turbulent times, the state's economy has outpaced the nation in job growth and productivity. The Texas economy has fared better and will rebound sooner because of a legal and regulatory environment that encouraged investment and job creation.

The Texas Civil Justice League works closely with lawmakers developing public policy, and the League has earned a reputation as an "honest broker" whose information you can trust. That was especially important during the 2009 session when misinformation, benign and deliberate, clouded the debate on many issues. Legal reformers faced pitched battles on several fronts, including evidence standards in asbestos-related mesothelioma cases, paying "phantom" healthcare damages in personal injury lawsuits, wide-ranging qui tam proposals, and unprecedented expansion of property owners' liability.

Twenty-two statewide professional and trade associations participated in the Jobs for Texas Coalition, a project of the Texas Civil Justice League. The coalition marshaled grassroots and lobbying efforts to oppose legislation that enriched trial lawyers at the expense of jobs.

Jobs for Texas



Twenty-two statewide professional and trade associations worked together to oppose legislation that created new ways to sue and stalled economic recovery. Jobs for Texas is a project of the Texas Civil Justice League.

American Forest & Paper Association

American Insurance Association

American Royalty Council

Associated Builders and Contractors of Texas

Associated General Contractors/Texas Building Branch

Automotive Parts & Services Association

National Federation of Independent Business/Texas

Property Casualty Insurers Association of America

Texans for Lawsuit Reform

Texas Apartment Association

Texas Association of Business

Texas Association of Manufacturers

Texas Chemical Council

Texas Civil Justice League

Texas Forest Industry Council

Texas Independent Producers and Royalty Owners Association

Texas Oil & Gas Association

Texas Petroleum Marketers & Convenience Store Association

Texas Pipeline Association

Texas Prosperity Project

Texas Railroad Association

Texas Retailers Association

81st Regular Session

The 81st regular session of the Texas legislature adjourned sine die Monday, June 1, 2009. During the 140-day session, lawmakers considered a record 7,419 bills, sending 1,459 to the governor.

The 2009 session opened as the last one ended—with uncertainty over the House leadership. Representative Joe Straus II (R-San Antonio) was elected by a coalition of Democrats and disaffected Republicans to replace three-term Speaker Tom Craddick (R-Midland). Former Texas Civil Justice League General Counsel Lisa Kaufman joined Speaker Straus's staff as policy director and special counsel. A voter identification bill favored by Republicans was the single most contentious issue in both chambers. The measure passed the Senate after a marathon floor debate, but was killed in the House at the end of the session by “chubbing” and parliamentary maneuvers that lasted four days, taking a lot of other legislation with it.

Unlike the legislature in many states, the Texas legislature did pass a balanced budget without tapping the \$9.1 billion “rainy day fund.” Lawmakers also improved access to higher education, invested in economic development and job creation, provided additional resources for border security, reduced tax burdens on small businesses, and reformed the Texas Windstorm Insurance Association, which provides wind and hail insurance for Gulf Coast property owners in the event of catastrophic loss.

Governor Perry called a special session beginning July 1, 2009, to deal with several unresolved issues, including agency continuation, highway bonds, and regional mobility authority comprehensive development agreements.

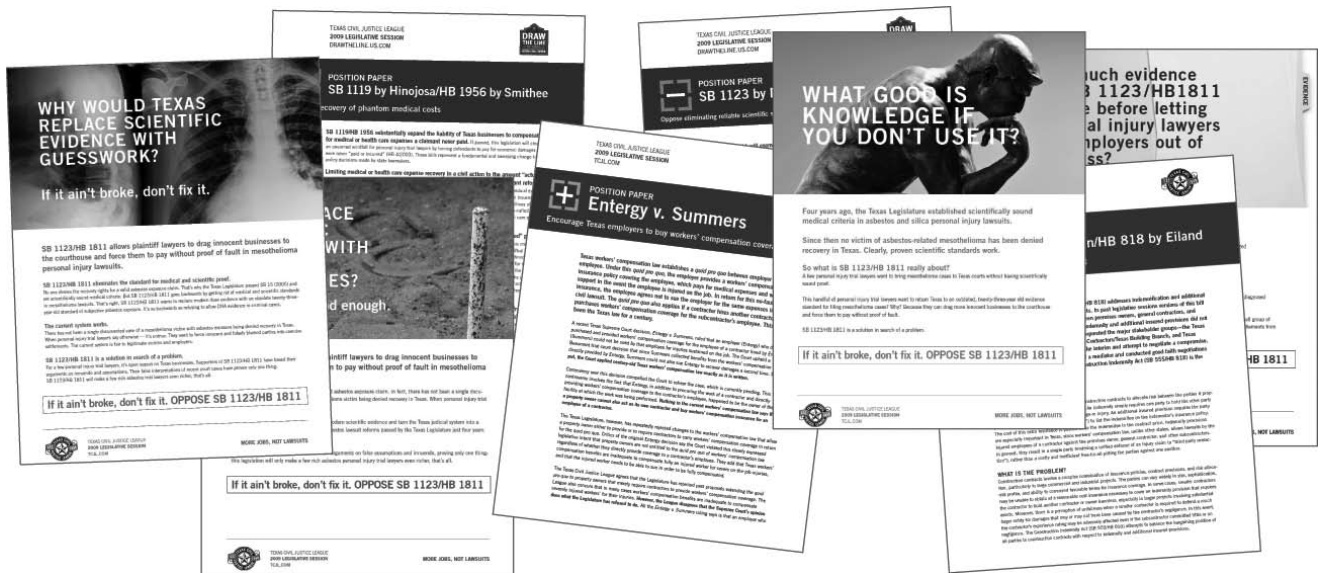
With few exceptions, civil justice legislation was referred to the Senate State Affairs and House Judiciary and Civil Jurisprudence Committees. Senator Robert Duncan (R-Lubbock) chaired the senate committee and sponsored the asbestos-related mesothelioma and workers' compensation (Entergy) bills. Demonstrating continuing good faith efforts to resolve difficult is-

sues, the Texas Civil Justice League negotiated a construction indemnity compromise during the interim at Chairman Duncan's request. The League maintained its commitment to that compromise throughout the legislative process, despite the personal injury trial bar's aggressive anti-business agenda. In the House, Chairman Todd Hunter (R- Corpus Christi) was a champion for legal reform, holding every major trial lawyer bill in committee.

2009 Bill Statistics

STATUS	HB	HCR	HJR	HR	SB	SCR	SJR	SR	Total HB & SB	Total
INTRODUCED	4,836	285	140	3,140	2,583	87	50	1,068	7,419	12,189
PASSED	867	203	9	3,069	592	55	0	1,062	1,459	5,857

Source: Legislative Reference Library of Texas (<http://www.lrl.state.tx.us/>)



Following is the major legislation defeated by a business coalition of Texas Civil Justice League and Jobs for Texas:

SB 1123 by Senator Robert Duncan (R-Lubbock)

Relating to the standard of causation in claims involving mesothelioma caused by exposure to asbestos fibers.

Last action: 4/22/09 House/Referred to Judiciary and Civil Jurisprudence

SB 1123 and its House companion, HB 1811, by Representative Craig Eiland (D-Texas City) reversed successful 2005 asbestos and silica litigation reform (SB 15). The bill exempted asbestos-related mesothelioma lawsuits from standards that require plaintiffs to introduce proof of the dose of the product they contend contributed to cause their disease. Texas courts have established scientifically sound standards to determine causation of disease by exposure to substances and most recently applied those standards to mesothelioma cases in *Borg-Warner Corp. v. Flores* (2007). The causation standard applied in the Borg-Warner decision has not barred anyone from the courthouse. In fact, plaintiffs in mesothelioma cases are regarded by claimants' lawyers as having the most valuable personal injury claims across the country. Without the legal standard applied in Borg-Warner, scores of defendants would be required to defend themselves against mesothelioma claims for which they may have no responsibility.

SB 1119 by Senator Juan Hinojosa (D-Corpus Christi)

Relating to the recovery of medical health care expenses in civil actions.

Last action: 4/27/09 Senate/Placed on the Intent Calendar

SB 1119 and its House companion, HB 1956, by Representative John Smithee (R-Amarillo) would have required Texas businesses to reimburse phantom medical expenses in personal injury lawsuits that were never paid in the first place. Limiting medical or health care expense recovery in a civil action to the amount “actually paid or incurred by or on behalf of the claimant” was among the most important reforms passed in 2003 (HB 4). SB 1119 created a double standard by retaining the “paid or incurred” provision in healthcare liability claims, but not for other personal injury claims.

HB 1657 by Representative Helen Giddings (D-De Soto)

Relating to workers’ compensation insurance coverage regarding certain contractors.

Last action: 5/27/09 Senate/Placed on the Intent Calendar

HB 1657 and its Senate companion, SB 2063, by Senator Robert Duncan (R-Lubbock) further weakened the workers’ compensation system and reversed 100 years of state law. This legislation resulted from considerable misunderstanding of the Texas Supreme Court’s 2008 and 2009 *Entergy v. Summers* decisions. The court simply held that parties who buy workers’ compensation insurance should get the benefit of the policy. HB 1657 jeopardized construction contracts, regardless of the size of the project.

HB 2044 by Representative Jim Keffer (R-Eastland)

Relating to a qui tam action on certain contracts for information about property recoverable by the state.

Last action: 5/14/09 House/Set on the Calendar

HB 2044 allowed private plaintiffs to file lawsuits for “false claims” in the name of the State of Texas. This bill was limited to specific types of oil and gas actions, but could have easily been amended in the process as a vehicle for SB 496 by Senator Jeff Wentworth (R-San Antonio), a sweeping qui tam proposal that would have triggered a landslide of litigation against Texas businesses.

SB 152 by Senator Rodney Ellis (D-Houston)

Relating to the standard of proof in health care liability claims involving emergency care.

Last action: 3/26/09 Senate/Committee action pending in State Affairs

SB 152 threatened access to urgent healthcare by weakening emergency room liability protections. Medical liability reforms passed in 2003 (HB 4) established a higher liability threshold for emergency services to ensure patients receive critical care and protect physicians from lawsuit abuse. The 2003 reforms have resulted in greater access to needed and timely healthcare. More physicians provide specialty and high-risk care in rural and urban areas.

SB 222 by Senator Royce West (D-Dallas)

Relating to arbitration and arbitration agreements.

Last action: 2/11/09 Senate/Introduced and referred to Jurisprudence

SB 222 eliminated the right to contract for arbitration as an alternative dispute resolution in many kinds of cases. Employers and employees should be able to arbitrate disputes, which often result in more cost-effective and timely results. For more than four decades, Texas law has allowed parties to contract for the dispute resolution process where appropriate.

SB 767 by Senator Royce West (D-Dallas)

Relating to the authority of the attorney general to bring suit on behalf of individuals injured by unlawful practices in restraint of trade.

Last action: 3/4/09 Senate/Introduced and referred to State Affairs

SB 767 created new ways to sue Texas businesses by preempting a 1977 U.S. Supreme Court ruling in *Illinois Brick v. Illinois* that bars lawsuits by an indirect purchaser in an antitrust action. SB 767 would have created class action lawsuits without offering defendants all the protections of the state's jurisprudence. SB 767 relied on *parens patriae* (typically used when the government acts for the benefit of a child or mentally ill person) as a basis for the attorney general to sue on behalf of individuals, although Texas has generally not allowed similar cases.

Additionally, numerous bills were filed creating new causes of action in a wide range of policy areas, including climate change, consolidated insurance programs, data security breach, guns in the workplace, immigration, loss of consortium, and sovereign (governmental) immunity.

The Wall Street Journal | June 13, 2009

Texas Tort Victories

The plaintiffs-lawyer lobby blows \$9 million and gets nowhere.

Texas recently finished its legislative session, and the best news is what didn't pass.

The plaintiffs-lawyer lobby spent \$9 million in last year's state legislative elections to help smooth the way for these bills, which were designed to roll back tort reforms passed in recent years, or to create new ways to sue. Yet that money wasn't enough to convince most Texas legislators to give up two-decades of hard-won legal progress, which ranges from class-action clean-up to medical liability reform.

Among the more notable failed proposals were a bill that would have shifted the burden of medical proof away from plaintiffs and on to defendants in asbestos and mesothelioma cases; an attempt to rip up Texas's successful system of trying multidistrict litigation in a single court; and legislation to allow plaintiffs to sue for "phantom" medical expenses.

Part of this success was due to the legislature's gridlock over a controversial voter ID bill. Yet Republicans who run the Senate and House also did yeoman's work to keep many bills from ever reaching the floor. Republicans also got a helping hand from a number of brave, antilawsuit Democrats, many of them from South Texas, where litigation has exacted more of an economic toll.

Speaking of the economy, it's notable that Texas created more new jobs last year than the other forty-nine states combined. Texas's low tax burden is one reason. But also important is a fairer legal environment in which companies are less likely than they were a generation ago to face jackpot justice.

Book Review

Life Without Lawyers: Restoring Responsibility in America

by Philip K. Howard

One evening early in 2009 on Central Park West in Manhattan, Philip K. Howard addressed an audience at the New York Historical Society about his newest book, *Life Without Lawyers*.

“I could sue you tonight for humiliating me,” Harold Evans, author and former president of Random House, said to Howard as the session opened, “by displaying greater intelligence than I have.”

“Truth is a defense,” Howard countered.

Life Without Lawyers seems an unlikely title for a book by a lawyer, but Howard’s work continues to attract attention. In addition to this account of the New York Historical Society in *The New Yorker*, there have been reviews and commentaries on *Life Without Lawyers* in major newspapers, *Time*, *Newsweek*, and network television – and by people on all sides of legal reform issues.

Newt Gingrich says Howard’s book is a “refreshing dose of common sense for legal reform,” and Bill Bradley calls it a “wake-up call.” George Will said *Life Without Lawyers* “surely will be 2009’s most-needed book on public affairs.” The columnist added, “Read Howard’s book and weep for the death of common sense.”

Life Without Lawyers is the third book for the senatorial Howard, the tall, silver-haired vice-chairman of the noted international law firm Covington & Burling LLP. The Yale-educated Howard, now 60 years of age, also is the founder of Common Good, a nonpartisan national coalition dedicated to restoring common sense to America.

“We asked law to do too much,” Howard simply states in *Life Without Lawyers*. “Law can destroy freedom as well as support it. Our founders were concerned about oppressive laws. They added the bill of rights precisely to prevent abuses of state power.”

In the opening chapter, *The Boundaries of Law*, he writes, “We have become a culture of rule followers, driven to frame every solution in terms of existing law or possible legal risk...We’ve lost our ability to make the choices needed to run a society.”

Howard suggests today’s bounty of rules is a result of the “rights revolution” that began in the 1960s.

On CBS, he told Jeff Greenfield, “We’re at a unique time in our history. The country is in an economic crisis. The institutions of our society are ‘dead in the water.’ People have been reforming schools for decades, and they just get worse. People keep trying to fix healthcare, and it gets more and more expensive. It doesn’t deliver better care. Something has to change.”

Howard says judges—not juries or statutes—can draw these boundaries. Juries are not accountable for consistency, he contends, and statutes are not able to evaluate the context. “Hundreds of legislators can’t crowd into the courtroom in each case,” he said. “Law is too complex to write a rule for every situation.”

He recommends, “Restore the authority of people with responsibility to make judgments that strive toward balance,” and adds, “Judges must take this responsibility...Judges interpret and apply the law – deciding which are valid claims as a matter of law.”

Howard asks, “Is the point of justice to make people really rich when they suffer misfortunes? Trial lawyers...have convinced the public that any tragedy is a reason to get rich.”

The examples are familiar now. A cartoon in *The New Yorker* illustrates the message. A child says to a friend, “My Mom says you can sleep in the top bunk if your parents sign a release form.”

Schools in Broward County, Fla., banned running at recess. The warning label on a five-inch fishing lure with a three-pronged hook says, “Harmful if swallowed.” A judge in Washington, D.C., sued his dry cleaner for \$54 million for allegedly losing

a pair of his pants. A high school in New York City prohibits nurses from calling ambulances without permission from the principal. A town in Oklahoma dismantles the slide on its playground for liability reasons. The proportion of lawyers in the workforce almost doubled between 1970 and 2000.

“Americans increasingly go through the day looking over their shoulders instead of where they want to go,” Howard says.

He presents “a vision for a new authority structure for America in which people are free to make daily choices...I propose to pull law back from daily choices and give people the freedom to be themselves, drawing on their personal energy, instincts and values.”

Howard says accountability, not law, is the key to responsibility. “Lack of accountability brings with it an evil twin – growth

in bureaucracy,” he writes. “When people can’t be judged for whether they did the job, pretty soon rules will instruct them on exactly how to do the job.”

Restoring accountability will require a basic shift in law, according to Howard, “removing legal walls and weapons that individuals use to insulate themselves and returning to broader principles.”

Howard believes that “humans are adept at making decisions. Life isn’t this hard.” He concludes, “To confront the challenges of our time, Americans must be free to take responsibility...Liberating America’s can-do spirit will work miracles.”

Life Without Lawyers is now available in paperback from W.W. Norton & Company.

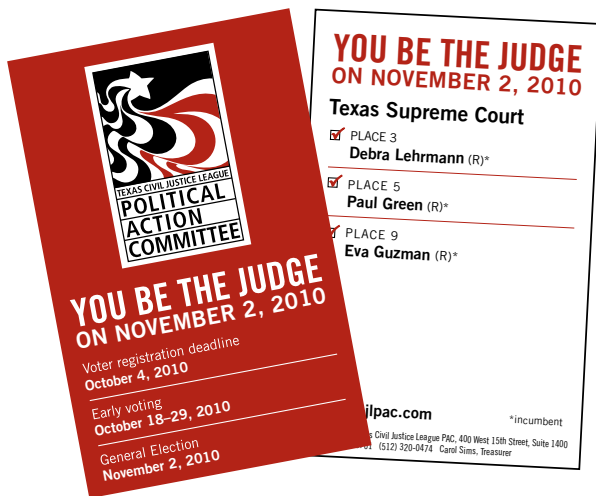


You be the judge on November 2, 2010

Texas Civil Justice League Political Action Committee

Red McCombs, Chairman
Carol Sims, PAC Director

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." Nearly twenty-five years of landmark legal reform is in jeopardy. If they win, Texas loses.



Texas voters will go to the polls November 2, 2010, to decide:

Three places on the Texas Supreme Court

23 places on Courts of Appeals, including four chief justices

15 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. Please complete and return the reply form on the back cover of this publication.



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