

INSIDE

2015 Legislators of the Year1, 18

**84th Texas Legislature
Session Summary**

Session Overview1
 TCJL Scorecard:
 A's Across the Board3
 Good Faith Remediation6
forum non conveniens6
 Standing in Contested Cases7
 Contested Case Procedures8
 Consolidated Insurance
 Programs (CIPs)8
 Other Noteworthy
 Liability Legislation8
 Other bills of interest10
 New Causes of Action11

TCJL 28th Annual Meeting4-5
 TCJL Amicus Report12
 Dan Patrick Luncheon13
 "What's on the Web?"14

East Texans Against Lawsuit
 Abuse Receives 2015 Best
 of Longview Award15

TCJL PAC Report15
 Judges on 2016 Ballot16
 84th Legislature17
 SCOT Docket Clear19

Events
 TCJL Annual11
 ATRA9
 ILR7

2015 LEGISLATORS OF THE YEAR

Representative Charlie Geren (R – Fort Worth)

A fixture of the House leadership and longtime Chair of the House Administration Committee, Rep. Charlie Geren authored and passed one of the 2015 session's most important civil justice reform bills, HB 1794. The bill limits the amount of civil penalties that a local government may recover for environmental violations from a business that is engaged in good faith remediation of the contamination. Faced with intense opposition from some local governments and environmental groups, Rep. Geren fashioned a bill that won overwhelming passage in the House with broad bipartisan support, once more demonstrating his outstanding leadership.



Representative Kenneth Sheets (R – Dallas)

A practicing defense lawyer and member of both the House Judiciary & Civil Jurisprudence and House Insurance Committees, Rep. Kenneth Sheets authored and passed HB 1692, which tightens the statutory doctrine of *forum non conveniens* to eliminate loopholes that allowed foreign lawsuits with no connection to the state into Texas courts. Rep. Sheets brought all the parties to the table to negotiate a fair and reasonable compromise that preserves a bona fide Texas resident's access to the courts while preventing abuses of the statute. His fairness, common sense, and experience make Rep. Sheets one of the most popular and effective pro-business members of the House.



See **Legislators**, page 18

84th Texas Legislature Session Summary

Session Overview

When the 84th Legislature convened in January, it was unclear what the new world order (at least in the Capitol) was going to look like. Two-thirds of the state leadership and a significant number of the House and Senate members were new. Two of the Big Three leadership offices (Governor, Lt. Governor, Speaker) had new captains at the helm. The Senate, led by newly-elected Lieutenant Governor Dan Patrick, was decidedly more conservative as evidenced by the aggressive agenda set forth early on, including open- and campus-

carry legislation, enhanced border security, property tax relief, budget reform, and expanded parental choice in public education. The "middle office" now led by Governor Greg Abbott proposed a more centrist agenda: a quality pre-kindergarten program, franchise tax relief, ethics reform, and enhanced funding for transportation. Returning incumbent, Speaker Joe Straus, easily won his fourth-term as Speaker and set out a bipartisan agenda concentrating on transporta-

See **Overview**, page 3

TEXAS CIVIL JUSTICE LEAGUE

STAFF

Carol Sims
Executive Director

Lisa Kaufman
General Counsel

George Christian
Senior Counsel

Annette Mitrosz
Project/Event Manager

Alicia Glover
Comptroller

BOARD OF DIRECTORS

John W. Fainter
Association of Electric Companies of Texas
TCJL Executive Committee – Chairman of the Board

Hector Rivero
Texas Chemical Council
TCJL Executive Committee – Vice Chairman of the Board

Bill Oswald
Koch Companies
TCJL Executive Committee – Treasurer

Leslie Ward
AT&T
TCJL Executive Committee - Secretary

Jeff Bonham
CenterPoint Energy
TCJL Executive Committee

Jay Gibson
Dow Chemical Company
TCJL Executive Committee

Louis J. Goodman
Texas Medical Association
TCJL Executive Committee

Richard Jackson
Texas Restaurant Association
TCJL Executive Committee

Robert W. Jones
Pfizer, Inc.
TCJL Executive Committee

Travis Kessler
Texas Assn. of Realtors
TCJL Executive Committee

Robert Levy
Civil Justice Reform Group
& ExxonMobil
TCJL Executive Committee

Todd Staples
Texas Oil & Gas Assn.
TCJL Executive Committee

Bo Gilbert
USAA
TCJL Executive Committee

Tom Sellers
ConocoPhillips
TCJL Executive Committee

George B. Allen
Texas Apartment Assn.

Gary Barrett
Bayer Healthcare

Russell Bridges
3M

Dave Cagnolatti
Phillips 66

Michael Chatron
Assoc. General Contractors - Texas Building Branch

John Clausen
State Farm Insurance

Eric Donaldson
Altria Client Services

Frank Galitski
Farmers Insurance Group

Jonna Kay Hamilton
Nationwide Insurance

Diane Hirsch
Valero Energy Corp.

Walt Jordan
Oncor Electric

Sherman "Tiger" Joyce
American Tort Reform Assn.

H. Lee Loftis, Jr.
Independent Insurance Agents of Texas

Gaspar X. Laca
GlaxoSmithKline

Steve Perry
Chevron

Richard Ponder
Johnson & Johnson

Julio Reyes
AEP Texas

Julie Moore
Occidental Petroleum

Tim Watt
Zachry Corp.

Ex officio

Red McCombs
McCombs Enterprises

Ralph Wayne

Ruben Martin
Martin Resources

TEXAS CIVIL JUSTICE LEAGUE
400 West 15th Street, Suite 1400
Austin, TX 78701
512-320-0474
www.tcjl.com
info@tcjl.com

Session Overview continued

tion infrastructure funding, reducing reliance on dedicated revenue to balance the budget, broad-based tax relief, and a responsible state budget.

Lt. Governor Patrick's first order of business was moving his colleagues to override the Senate's longstanding tradition of requiring a two-thirds vote to bring legislation to the floor, settling on a three-fifths supermajority. This rule change meant that 19 out of the 20 Republican Senators could bring up any bill over the objection of the 11 Democrats. The new rule served its purpose as the Senate passed most of its major bills early in the session, with party-line votes on most of the more controversial measures.

Basically ignoring the goings-on in the Senate, the House worked on its own priorities. The House passed the Governor's pre-kindergarten initiative, substituted its own tax relief plan for the Senate's, and methodically addressed the budget, major Sunset legislation, ethics, and transportation funding. The mid-point of the session came and went. The House continued on its own trajectory, without regard to the Senate, leading to increased frustration on the east side of the building. Many observers feared we were headed for one or more special sessions.

But, as April faded and the May sunshine emerged, so too did the attitudes around the Capitol improve. The House and Senate budget conferees, led by the Chairman John Otto (House Appropriations) and Chairwoman Jane Nelson (Senate Finance), came to resolution on the major budget items: Medicaid, public and higher education, employee retirement, and public safety (especially increased funding for border security). Agreement was reached on restructuring transportation funding thanks to the leadership of Senator Robert Nichols and Representatives Joe Pickett and Larry Phillips. And, the last big hurdle, tax relief, skillfully negotiated by Ways & Means Chairman, Dennis Bonnen, resulted in a compromise giving each side and the Governor what they wanted: an increase in

the school tax homestead exemption (Senate) and a substantial 25% cut in the franchise tax (Governor, House). The Republicans passed plenty of red-meat this session including open-carry, campus concealed carry, and a more stringent parental consent bill for a minor's abortion; however, constitutional carry, prohibition of same-sex marriage, sanctuary cities, and DREAM Act repeal did not. Of the session's major leadership initiatives, only ethics reform failed to make the grade, when the House and Senate could not agree over the disclosure of "dark money." The session ended calmly at mid-day on June 1.

TCJL Scorecard: A's Across the Board

TCJL's primary legislative program consisted of five major pieces of legislation, four of which passed and were signed by the Governor, and the fifth will be addressed in a case pending before the Texas Supreme Court. TCJL extends a heartfelt thanks to our bill authors, sponsors and co-authors, without whose leadership we would not have had such a successful session.

Our philosophy of seeking bipartisan support for civil justice reforms has not changed in 30 years. Going into 2015, this philosophy faced a pretty high hurdle, given the more conservative composition of the Legislature in general and the Senate in particular. Longtime stalwart supporters of reasonable civil justice reforms such as Senator Robert Duncan and Representative Tryon Lewis retired from the Legislature, leaving the key committees in new hands. Fortunately, the Senate State Affairs and House Judiciary & Civil Jurisprudence found two very capable chairs in **Senator Joan Huffman** and **Representative John Smithee**. Recognizing the importance of these committees to the civil justice system, Lt. Governor Patrick and Speaker Straus appointed experienced and knowledgeable members as well, such as **Senators Craig Estes, Brandon Creighton, Troy Fraser, Jane Nelson, Judith Zaffirini,**

and **Brian Birdwell**, and practicing attorneys **Chairman John Smithee, Kenneth Sheets, Travis Clardy, and Mike Schofield** in the House. Veteran House member Jodie Laubenberg also made an important contribution to this committee. As the session went on, these members made invaluable contributions to the ultimate success of TCJL's legislative program.

We would also like to thank the members of Senate State Affairs and House Judiciary & Civil Jurisprudence who may not have seen eye-to-eye with us on individual bills in the committee, but who kept their doors open to us and took a serious interest in the civil justice system. These members include **Senator Rodney Ellis** and **Representatives Senfronia Thompson, Richard Raymond, Ana Hernandez, and Jessica Farrar**, all of whom have served on the committees in the past and for whom we have nothing but the greatest respect. These committees are frequently called upon to tackle highly contentious and complex issues with enormous consequences for the Texas economy. They have to mediate between parties with well-grounded and legitimate positions and decide on the best policy result for all Texans. All of these members deserve our gratitude for their dedication to serving and to working with us to move Texas forward.

This session was a little different than its predecessors in that a substantial part of TCJL's legislative agenda involved environmental legislation passing through the Senate Natural Resources Committee and the House Committee on Environmental Regulation. These committees, ably chaired by **Senator Troy Fraser** and **Representative Geanie Morrison**, were likewise populated by thoughtful and experienced members from both sides of the aisle. On the Senate side, in addition to Chairman Fraser, we had the good fortune of working with veterans such as **Senators Craig Estes, Brian Birdwell, Juan "Chuy" Hinojosa, Eddie Lucio Jr.,**

See **Overview**, page 6

TCJL 28th Annual Meeting



Amber Pearce (Pfizer), Richard Ponder (Johnson & Johnson)



Darren Whitehurst (Texas Medical Association), Robert Floyd (Hance Scarborough, LLP)



Dave Cagnolatti (Phillips 66),
Hector Rivero (Texas Chemical Council)



Former Supreme Court Justice Craig Enoch, Carla Johnson, Supreme Court Justice Phil Johnson



Former Supreme Court Justice Craig Enoch,
Tenth Court of Appeals Chief Justice Tom Gray



Third Court of Appeals Justice Robert Pemberton, Honorable Todd Staples (Texas Oil & Gas Association)

November 6, 2014



Richard Ponder (Johnson & Johnson), Carol Sims (Texas Civil Justice League),
Dave Cagnolatti (Phillips 66), John Clausen (State Farm Insurance)



Harvey Kronberg (Quorum Report)



George Christian (Texas Civil Justice League)



Julie Moore (Occidental Petroleum)



Tara Snowden (Zachry Corporation),
Corbin Van Arsdale (AGC – Texas Building Branch)



Jonna Kay Hamilton (Nationwide Insurance)



Lisa Kaufman (Texas Civil Justice League)



Hector Rivero (Texas Chemical Council)

Session Overview continued

Robert Nichols, Kel Seliger, Carlos Uresti, and **Judith Zaffirini**, all of whom deserve a great deal of thanks from the business community for their work this session. We also appreciate freshman Senator Bob Hall's important contributions to the work of the committee. In the House, kudos go out to **Chairwoman Geanie Morrison, Vice Chair Eddie Rodriguez,** and **members Jason Isaac, Kyle Kacal, Ken King, Phil King, J.M. Lozano, Ron Reynolds,** and **Ed Thompson**. Each of these members was willing to work with us (even those who didn't agree with us on all things all the time) and help us get across the finish line on some very important legislation.

Good Faith Remediation

Signed by the Governor.

HB 1794/SB 1509

Representative Charlie Geren, Senator Kelly Hancock (lead authors); **Representatives Patricia Harless, Cindy Burkett, Oscar Longoria, Jim Murphy,** and **Pat Fallon** (co-authors)

In recent years, Harris County has filed a number of lawsuits against several companies, a number of which are TCJL members, for alleged violations of the state's environmental laws. Although the authorizing statute enabling local governments to bring these types of lawsuits has been on the books for decades, Harris County's aggres-

sive application of the statute would have dramatically altered the face of environmental enforcement in Texas.

Harris County did not sue the companies for actual damages; but rather, penalties that were punitive in nature. These penalties, in the billions of dollars, were assessed regardless of the fact that the alleged violations occurred decades before the company owned and operated a facility and without regard to the company's actions to voluntarily report and remediate the violations. Such lawsuits neither deter misconduct nor give a business any incentive to work with the federal, state, and local environmental authorities to remediate pollution. Unlike other civil and criminal lawsuits, these actions had no statute of limitations and no limit on the total amount of penalties that could be assessed. Lawsuits of the magnitude brought by Harris County posed a grave threat to the fairness of the environmental enforcement system and to Texas' economic competitiveness in the long run.

HB 1794 addresses these problems in two ways. First, the bill limits the amount of maximum penalties that a local government may recover in a suit to recover civil penalties to \$4.3 million (divided equally between the state and the local government). The limit is high enough to punish polluters who act knowingly and intentionally and to deter

ongoing violations, but does not permit a local government to seek limitless, punitive penalties. The bill also establishes a five-year statute of limitations on lawsuits for penalties, running from the earlier of the date the alleged violator notifies the TCEQ of the violation or the date the alleged violator receives a notice of enforcement from the TCEQ. Thus, the bill encourages violators to report and remediate violations as quickly as possible.

One of the primary reasons that Texas leads the nation in job creation is a balanced and reasonable regulatory environment. Subjecting individuals and businesses to unfair and punitive lawsuits, however, even when they take swift action to repair the damage, is neither balanced nor reasonable. HB 1794 strikes the right balance between vigorously enforcing environmental standards and encouraging good faith remediation whenever it is necessary.

forum non conveniens

Signed by the Governor.

HB 1692/SB 1942

Representative Kenneth Sheets, Senator Joan Huffman

HB 1692 reforms the doctrine of *forum non conveniens* to preserve Texas courts for cases with a significant connection to the state. After intense negotiations during the session between TCJL, the Texas Association of

The logo for the Texas Civil Justice League is a dark red square with a white border. Inside the square, the words "TEXAS CIVIL JUSTICE LEAGUE" are written in white, bold, sans-serif capital letters, stacked in four lines.

**TEXAS CIVIL
JUSTICE
LEAGUE**

The Texas Civil Justice League
wisely uses membership funds.

If you want to help save printing and postage costs
choose to receive an electronic newsletter
instead of a printed one.

**Email info@tcjl.com
with the subject line "Electronic Newsletter."**

Session Overview continued

Defense Counsel (TADC), and the Texas Trial Lawyers Association (TTLA), an agreement was reached on the final form of this legislation.

Under the doctrine of *forum non conveniens*, a trial court may dismiss a lawsuit if another court is a more appropriate forum to hear the case. The doctrine allows a Texas court to dismiss a lawsuit with little or no connection to the state. For example, if an Illinois resident sues a national company in Harris County based on an event that occurred in Illinois and involved Illinois residents and witnesses, the Harris County district court could dismiss the case based on a finding that it makes more sense for the litigation to be brought in an Illinois court. The doctrine likewise applies to lawsuits that should be litigated in another country.

Texas law entitles a plaintiff who is a “legal resident” of Texas to maintain a lawsuit in Texas on the basis of residency alone. This exception assures that a bona fide Texas resident can seek an available remedy in a Texas court for a claim governed by the statute. Texas law is unique because most jurisdictions consider the legal residency of the plaintiff as one of the factors in the balancing test, but not as an absolute bar to dismissal of the case.

In a recent case, the Texas Supreme Court was faced with a lawsuit that arose from an automobile accident involving legal residents of another country and that occurred in the other country. Under ordinary circumstances, the proper application of the doctrine of *forum non conveniens* would

probably dictate that the lawsuit be dismissed because the other country would be a more appropriate forum to hear the suit. In that case, the plaintiffs were citizens and residents of a foreign country where the accident occurred and all the witnesses and evidence were located. Unfortunately, however, the Court held by a 5-4 vote that the case could not be dismissed because the current law is unclear.

This problem is not isolated to a single lawsuit. Over the past five years, one automobile manufacturer alone has faced 57 similar cases in Texas, and others are now seeking to use the loophole in the current statute to bring foreign claims to our courts. While Texas may be a more attractive forum than some other countries, given the nature of our civil justice system, Texas should not entertain cases with little to no connection to our state.

As agreed by the stakeholders, HB 1692 amends the Texas *forum non conveniens* statute, §71.051, Civil Practice & Remedies Code, to:

- maintain the current exception to the application of the doctrine if the plaintiff is a legal resident of the state or if the plaintiff is a derivative claimant of a legal resident;
- allow the court, in its sound discretion, to determine whether a non-resident plaintiff’s claim has a significant connection to Texas, without regard to the person’s national origin or country of citizenship; and
- clarify that the definition of “plaintiff”

does not include peripheral parties, such as representatives, guardians, next friends, or administrators.

These straightforward reforms will retain the open access of legal residents of this state to their own courts, while requiring non-residents to establish that claims arising in another state or country have a significant connection to Texas before availing themselves of our taxpayer-supported court system. The legislation will also bring Texas law closer into line with the law of every other state and the federal courts. Finally, it will close an inadvertent loophole in Texas law that could once again have made Texas “the courthouse for the world.”

Standing in Contested Cases

HB 1113/SB 941

Representative Travis Clardy, Senator Brandon Creighton

(Incorporated into SB 709 by Senator Fraser and Representative Morrison. Signed by the Governor.)

A series of recent Texas Court of Appeals decisions reaffirm longstanding Texas law that the Texas Commission on Environmental Quality (TCEQ) has broad discretion to grant or deny requests for contested case hearings in licensing and permitting matters. Despite these rulings, however, parties such as the Sierra Club continue to challenge the Commission’s discretion through expensive and repetitive litigation

See **Overview**, page 8

U.S. Chamber Institute for Legal Reform 16th Annual Legal Reform Summit

Tuesday, October 27, 2015 • 8:30 am – 5:00 pm (Eastern Time)
Washington, D.C.

For more details, please visit:

<http://www.instituteforlegalreform.com/>

Session Overview continued

against the agency. These lawsuits generally urge the courts to restrict the agency's authority to determine whether a party is entitled to a contested-case hearing under statutory standards enacted by the Texas Legislature. They have also tried to force the agency to hold evidentiary hearings on the issue of standing, despite the fact that the statute does not require such hearings and leaves the decision within the Commission's discretion. Though these challenges have been uniformly unsuccessful, they continue to cause unnecessary and costly delays in permitting and divert agency and judicial resources.

As eventually incorporated into the general contested case hearing reform bill, SB 709, **HB 1113** addresses the problem by clarifying that the Commission need not grant "affected person" status to a group or association, such as the Sierra Club, unless the group or association identifies, by name and physical address in a timely request for a contested case hearing, a member of the group or association who would qualify as an affected person in the person's own right. The bill also requires the person making the request for a hearing to have timely submitted comments on the permit application itself. Finally, the bill outlines the items the Commission may consider when determining affected person status, which generally involve the materials, expert opinions, and analysis used by the executive director with respect to the underlying permit application.

Contested Case Procedures

HB 1247

Representatives Wayne Smith, Patricia Harless, and Tracy King (Incorporated into SB 709 by Senator Fraser and Representative Morrison. Signed by the Governor.)

Under current practice in contested case hearings on environmental permits, a permit applicant, who has already presented all technical and other evidence on the entire permit through the lengthy (and costly)

review at the agency and received a draft permit, must do the same thing again before the State Office of Administrative Hearings. As it stands today, the applicant must prove its case twice: once to the commission staff and then again to an administrative law judge who has not been privy to the lengthy and exhaustive technical review already conducted by the staff.

As incorporated into SB 709, **HB 1247** addresses this "double jeopardy" aspect of contested cases. It establishes that the draft permit, executive director's recommendation, and supporting documentation create a prima facie showing that the permit complies with all applicable laws and regulations. The protesting party must rebut this showing by demonstrating the specific parts of the draft permit that violate environmental laws or standards. The executive director and permit applicant may then present additional evidence supporting the permit.

Consolidated Insurance Programs (CIPs)

Pending before the Texas Supreme Court

HB 1668/SB 666

Representative Paul Workman, Senator Kevin Eltife (lead authors);

Representatives Rene Oliveira, Ron Simmons, Pat Fallon (co-authors)

The Texas Workers' Compensation Act has long permitted a general contractor to provide a consolidated insurance program (CIP) that covers a subcontractor and the subcontractor's employees on a job site. These consolidated insurance programs (CIPs) are a common feature of construction projects in Texas and help ensure that every contractor and contractor's employee on a construction site have workers' compensation insurance coverage for workplace injuries. If a general contractor provides a CIP, the law provides that the subcontractor and subcontractor's employees are deemed to be employees of the general contractor solely for the purpose of workers' compensation coverage.

Despite well-established legal authority to

the contrary, a recent case decided by the Corpus Christi Court of Appeals, *TIC Energy and Chemical, Inc. v. Martin* (No. 13-14-00278-CV), determined that the section of the Workers' Compensation Act authorizing CIPs conflicts with another section of the Act, which establishes the general rule that contractors are independent. This opinion has created uncertainty regarding the status of contractors and their employees under consolidated insurance programs. **HB 1668** simply clarifies that the two statutes do not conflict, so that CIPs may continue to operate in Texas as they have for many years. Though time ran out on **HB 1668** as it made its way through the process, TCJL has filed an *amicus curiae* brief in the TIC Energy case currently pending before the Texas Supreme Court. We trust the Court will correct this aberrant ruling.

Other Noteworthy Liability Legislation

The five bills discussed above comprised of TCJL's major initiatives for the 84th legislative session. Additionally, a number of other bills were of significant interest to our membership. TCJL played a supporting role, as needed, in each of these pieces of legislation.

HB 1492 by Representative Doug Miller and Senator Charles Schwertner makes significant, positive changes to the law governing disclosure of asbestos and silica bankruptcy trust claims, as well as extends the deadline for the MDL court to dismiss inactive asbestos claims from August 31 to December 31 of this year. The bill primarily deals with the timing and discoverability of asbestos bankruptcy trust claims. It generally mandates that claimants file applications with each trust that may owe compensation to the plaintiff, provided that it doesn't cost more to pursue the claim than the trust fund is likely to pay. Claimants must file with the trust funds in advance of trial and give notice to each defendant of each claim and the amount of compensation paid. The bill allows a defen-

Session Overview continued

dant who receives information regarding the claimant's exposure to move for a stay of trial in order for the claimant to seek recovery from a trust fund from which the claimant has not previously applied for compensation. Finally, the bill deems trust claim information authentic, relevant, and discoverable and not privileged, regardless of the existence of a confidentiality agreement. The bill takes effect on September 1, 2015, and applies to claims pending on and filed after that date. **Signed by the Governor.**

SB 1457 by Senator Robert Nichols and Representative Travis Clardy deals with the high volume of patent litigation in federal district court in Marshall, Texas, and the need to protect consumers from aggressive "patent trolling" by law firms. Typically, the firms send mass demand letters threatening businesses with patent infringement lawsuits if they don't pay a specified "settlement" amount. While everyone agrees that federal law virtually pre-empts most patent law issues, several states have enacted statutes imposing liability on a patent troll for "bad faith" patent infringement claims. We can add Texas to the list of these states taking action to shut down these operations. SB 1457 gives the attorney general the authority to sue a bad faith patent troll for

up to \$50,000 in civil penalties per violation.

Signed by the Governor.

SB 735 by Senator Troy Fraser and Representative Ken King began its journey through the legislative process as an absolute bar to net worth discovery. As the bill ground its way through the legislative sausage-maker, negotiators replaced the total bar with a threshold test. Under the bill, the plaintiff must show a "substantial likelihood of success on the merits" in order to get discovery of net worth evidence for purposes of punitive damages. The bill also defines "net worth" as total assets less total liabilities on a date the trial court deems appropriate. The bill passed over the objections of TTLA. **Signed by the Governor.**

Hailstorm Insurance Reform Fails Despite Great Effort – For the last several years, the trickle of hailstorm-related first party claims against private insurers has grown into a flood. A handful of plaintiff's attorneys have used the TWIA playbook to leverage settlements of mass claims in storm-damaged areas of the state from Amarillo to the Rio Grande Valley. Property damage claims from storm damage skyrocketed from about 2% of claims to 30-35% in affected parts of the state, a significant number of which were generated by public

insurance adjusters going door-to-door in neighborhoods recently raked by hailstorms. In an effort that really began back in 2011, carriers and independent agents petitioned the Legislature for a package of changes to reduce litigation incentives (Chapters 541 and 542) and to crack down on case running by public adjusters. Consumer groups and the plaintiff's bar protested that these changes were so restrictive that consumers would be cut off from the courthouse if they could not reach a satisfactory settlement with their insurers.

As the session wore on, it became increasingly apparent that no consensus or agreement could be reached between carrier and consumer advocates. Some of the major business groups, troubled by the potential effect of the changes on business as an insurance consumer, declined to take sides in the fight. The Senate passed a strong bill, **SB 1628 by Senator Larry Taylor**, which did not get a hearing in the House Insurance Committee. Instead, **Representative John Smithe** laid out a more moderate version of the bill as a starting point toward a bill that could muster enough support in the House to pass. The

See **Overview**, page 10



American Tort Reform Association Legislative Conference For State Coalition Leaders November 9-11, 2015 • Atlanta, GA

For more information, please contact:
mfullenbaum@atra.org or lsheetsjarrell@atra.org

202-682-1163
www.atra.org

Session Overview continued

bill got out of committee late in the session, but neither side could be brought on board. SB 1628 died in House Calendars.

SB 1628 may have faltered in part because it ran parallel to major legislation overhauling the financing structure of TWIA. For the past several sessions, efforts by legislators from the coastal areas of the state to “fix” TWIA could not overcome the determined opposition from the non-coastal legislators and the carriers. This session, however, produced an outcome. Despite heavy opposition, SB 900 by Senator Larry Taylor and Representative Greg Bonnen passed the Legislature late in the session and has been signed by the Governor. The bill establishes a tiered system of premium assessments designed to stabilize TWIA’s financial position. The bill also reduces carrier representation and reallocates positions on the TWIA board, authorizes the TDI commissioner to contract with a third party to administer TWIA, and gives TWIA the ability to use alternative risk financing mechanisms (in addition to purchasing reinsurance). If the commissioner contracts with a third party administrator, the administrator is not subject to Chapter 542.

Despite the failure of SB 1628, the Legislature made some progress in addressing the first party litigation problem. **SB 1060 by Senator Juan Hinojosa and Representative Ed Thompson** subjects public insurance adjusters to the criminal barratry statute, bars them from receiving referral fees or running cases for attorneys, and prohibits financial ties with contractors. **HB 1265 by Representative Gene Wu and Senator Kevin Eltife** similarly prohibits a licensed public insurance adjuster from directly or indirectly soliciting employment for an attorney or entering into a contract with the insured for the primary purpose of referring the insured to an attorney without the intent to perform the services customarily provided by the adjuster. We do expect, however, that first party litigation

will be on the agenda when the Legislature meets again in 2017.

Other bills of interest

County Court Juries Unchanged

SB 824 by Senator Joan Huffman and HB 1122 Representative Travis Clardy would have required a 12-member jury in a county court civil case involving an amount over \$200,000. It also would have allowed a party to formally request a 12-person jury if the amount in question exceeded \$100,000. TCJL strongly supported this bill, which easily passed the Senate but got bogged down in the House when several members requested exemptions for their local county courts. We applaud Representative Clardy and Senator Huffman for trying to keep this bill clean throughout the process, and look forward to a renewed effort to pass it in 2017.

Three Judge Specialty Courts

SB 455 by Senator Brandon Creighton and Representative Mike Schofield allows the attorney general to petition the chief justice of the Supreme Court to appoint a special three-judge district court to hear matters related to public school finance and redistricting in which the state is a defendant. Appeal of a decision of the special court goes directly to the Supreme Court. As originally filed, this bill contained a discretionary provision allowing the OAG to petition the Supreme Court for a 3-judge court in any matter of statewide significance. **Signed by the Governor.**

Medical Liability

Concerns over the expanding scope of Chapter 74 medical liability claims drew some legislative attention this session, though few changes were made. **HB 1403 by Representative Kenneth Sheets and Senator Craig Estes** clarifies that a “health care liability claim” under §74.001, Civil Practices & Remedies Code excludes a workers compensation action for death or injury that

occurred in the course of employment duties. **Signed by the Governor.**

Condo Defect Construction Liability

HB 1455 by Representative Phil King and Senator Brandon Creighton requires that condo owners be notified of proposed litigation related to construction defect claims; requires a majority vote of condo owners before legal action initiated by the condo board can proceed; requires a complying engineer report; and allows affected parties an opportunity to address defects. This bill takes effect September 1, 2015. **Signed by the Governor.**

Immunity from Civil Liability

Several bills affecting immunity from liability for various activities passed and were sent to the Governor. Some of the more notable of these include:

- **HB 1510 by Representative Senfronia Thompson and Senator Sylvia Garcia**, adds §92.025, Property Code, which provides that a cause of action against a landlord does not accrue solely on the basis that the landlord leases to a tenant, based on evidence that the tenant has been convicted of, or arrested or placed on deferred adjudication for, an offense. The section does not preclude a suit for negligent leasing if the tenant was convicted of certain offenses or has a reportable conviction or adjudication and the landlord knew or should have known of the conviction or adjudication. This section does not create a cause of action or expand an existing cause of action. **Passed without the Governor’s signature, effective January 1, 2016.**
- **HB 1666 by Representative Dennis Bonnen and Senator Joan Huffman**, extends liability protection related to first responder performance in a training exercise to match the protections in place related to first responder performance of duties during an actual emergency. **Signed by the Governor.**

Session Overview continued

- **HB 2303 by Representative John Kuempel and Senator Joan Huffman** provides liability protection for private landowners by covering recreational off-road vehicles. **Signed by the Governor.**

HB 2390 by Representative Dwayne Bohac and Senator Brandon Creighton prohibits a suit against an employer that establishes, maintains, or requires participation in an employee wellness program unless:

- (1) the program discriminates on the basis of a prior medical condition, age, gender, or income level; or
- (2) the cause of action is based on intentional or reckless conduct. The bill explicitly does not create a cause of action or expand an existing cause of action.

Signed by the Governor.

SB 627 by Senator Joan Huffman and Representative Todd Hunter applies the truth defense to an accurate reporting in the media of allegations regarding a matter of public concern. The bill specifically does not limit any other defense or remedy available.

Signed by the Governor.

New Causes of Action

Of particular importance to TCJL are bills that create new causes of action. This session, we closely monitored those and a record number — approximately 120 bills — fell into that category. Of those, only ten made their way to the Governor's desk. These 10 have become law, including one related to a state bullion repository, one related to human trafficking, and one related to the Business Organizations Code.

Legislation creating new causes of action:

- | | |
|---------|--|
| HB 311 | Relating to an executory contract for the conveyance of real property. |
| HB 483 | Relating to the establishment and administration of a state bullion depository. |
| HB 968 | Relating to civil liability of shareholders and members of certain legal entities that engage in the trafficking of persons. |
| HB 1265 | Relating to a deceptive act or practice related to an |

unsolicited advertisement of goods and services sent by mail.

HB 2066

Relating to the rescission of non-judicial foreclosure sales.

HB 2573

Relating to a deceptive trade practice related to the use of certain words to imply that a person who is not an attorney is authorized to practice law and the prosecution of a cause of action arising from that practice.

HB 2590

Relating to providing a remedy for fraud committed in certain real estate and stock transactions.

SB 860

Relating to corporations and fundamental business transactions.

SB 1135

Relating to civil and criminal liability for the disclosure or promotion of certain intimate visual material.

SB 1213

Relating to prohibiting the re-identification of certain de-identified information and the release of any re-identified information.

TEXAS CIVIL
JUSTICE
LEAGUE

28th Annual Meeting

Thursday, November 5, 2015

2:00 – 3:00 Board of Directors • 3:00 – 5:00 Member

Headliners Club

221 W. 6th Street • Austin, TX 78701

Details may be found at www.tcjl.com

Please RSVP to rsvp@tcjl.com

TCJL Amicus Report

As a service to our members, TCJL provides *amicus curiae* support in important cases before state and federal appellate courts. Over the past two years, TCJL has written briefs in approximately 25 cases before the Texas Supreme Court, one case in the United States Supreme Court, and one case in the Florida Supreme Court. When a TCJL member requests *amicus* support in a pending appellate matter, TCJL reviews the issues in the particular case to assess their potential implications for the TCJL membership as a whole, not just a single industry or business. If we determine that the case raises significant concerns to our membership, we then consider, based on TCJL's nearly 30 years of experience in legislative and judicial issues, whether we have something unique to say to the court. Only if we determine that we can offer a perspective that no other organization can provide do we dedicate our members' resources to researching and writing in the case.

We have summarized below recent cases over the past six months in which TCJL participated as an amicus. All of TCJL's *amicus* briefs are available for review on the TCJL website.

1. *Denbury Green Pipeline-Texas, L.L.C. v. Texas Rice Land Partners, Ltd., Et Al.* (15-0225)

This case arose from the SCOT's decision in *Texas Rice Land Partners, Ltd. v. Denbury Green Pipeline-Texas, LLC*, 363 S.W.3d 192 (Tex. 2012), in which the Court held that a certificated common carrier pipeline had to establish a "reasonable probability" of public use in order to exercise the power of eminent domain to acquire right-of-way for a project. Following remand, the trial court ruled on summary judgment in favor of Denbury. The Beaumont Court of Appeals reversed the trial court, holding that the common carrier's subjective intent when a pipeline project is planned controls the determination of "reasonable probability" despite evidence of actual contracts between

the carrier and unaffiliated third parties.

In its brief, TCJL argues that nothing in the Supreme Court's opinion in *Denbury* leaves it to a finder of fact to interpret a carrier's subjective "intent." In plain language, the phrase "person intending to build" a pipeline simply means a carrier seeking common carrier status under §111.002(6), Natural Resources Code. Intending to build a pipeline and intending to operate the pipeline in a certain manner are very different things, which is precisely why this Court focused on the "reasonable probability"—"one that is more likely than not"—of the pipeline's use *after construction*.¹ It follows that when weighing summary judgment evidence in a challenge to an entity's common carrier status, a court should conduct an objective analysis of the typical uses of similar pipelines in the same area or region, as well as other factors, such as the determination of common carrier status by the appropriate state agency, the business plan of the carrier seeking to build the pipeline, the existing and future markets for the product or products to be transported by the carrier, and other factors the court deems probative of "reasonable probability." The Court of Appeals sidestepped this analysis by focusing entirely on the subjective intent of the carrier and ignoring, for example, both the *actual use* of the pipeline and the developing markets for carbon dioxide use and sequestration in carrier's immediate service area. The Supreme Court has not yet decided whether to grant review.

2. *TIC Energy and Chemical, Inc. v. Kevin Bradford Martin* (15-0143)

This case involves a potentially serious misreading of two sections of the Labor Code giving general contractors the ability to become the "statutory employer" of a subcontractor and the subcontractor's employees for purposes of workers' compensation insurance coverage. The Corpus Christi Court of Appeals reversed a trial court's grant

of summary judgment to TIC on the basis that the statutory provision defining an "independent contractor" and that allowing contractor controlled insurance programs cannot be reconciled. This ruling contradicts numerous holdings from other Courts of Appeals and the Texas Supreme Court. TCJL's brief outlines the legislative history of these provisions to show not only that the statutes operate in harmony, but the public policy rationale of the Legislature to encourage general contractors to provide workers' compensation coverage for everyone on a jobsite. The Supreme Court is considering whether to grant review, which we hope will be done in the near future.

3. *UDR Texas Properties, L.P. D/B/A The Gallery Apartments, United Dominion Realty Trust, Inc., ASR of Delaware, L.L.C., and UDR Western Residential, Inc. v. Alan Petrie* (15-0197)

In this important premises liability case, the Fourteenth Court of Appeals (Houston) held that the owner of an apartment complex could be held liable for criminal conduct on the premises on a finding that a crime in the area was merely "foreseeable," rather than a finding that the risk of criminal conduct on the premises was so great as to impose on the owner a duty to prevent criminal conduct. TCJL argues that the Court of Appeals' ruling violates the SCOT's decision in *Timberwalk Apartments, Partners, Inc. v. Cain*, 972 S.W.2d 749, 756 (Tex. 1998) and creates substantial uncertainty in Texas premises liability law that could have far-reaching effects on the economic viability of businesses, especially those located in communities with higher crime rates. These communities are precisely the ones that need redevelopment to attract housing, businesses, and schools in order to *reduce crime* and make them attractive and safe for people to live and work. The Court has not yet granted review in this case.

1. *Denbury* at 202, n. 29.

continued on next page

4. *Texas Department of Insurance, Division of Workers' Compensation v. Bonnie Jones and American Home Assurance Company* (15-0025)

TCJL's brief argues that Dallas Court of Appeals erred in affirming a trial court judgment that disregarded explicit provisions of the Texas Workers' Compensation Act applying to a claim for supplemental income benefits. In doing so, the Court infringed on the Legislature's prerogative to establish the specific conditions that determine eligibility for benefits and the public policy objectives that a claimant to make a serious effort to return to employment as soon as possible after a workplace injury. The Court's decision also threatens to reopen the system to a new stream of litigation that will raise the cost of workers' compensation insurance and make it more difficult for employers to provide workers' compensation coverage for their employees. The Court has not yet granted review in this case.

5. *In Re Longview Energy Company, Relator* (14-0175)

In this mandamus action, the San Antonio Court of Appeals held that the legislatively enacted cap on the amount of a supersedeas bond applies on a per judgment basis rather than on a per judgment debtor basis. On the basis of the legislative and public policy history of the cap, which stretches back to the *Texaco v. Pennzoil* litigation of the late 1980s, the Court of Appeals decision was correct and should be upheld. In an opinion by Chief Justice Hecht, the SCOT reviewed the history of the cap and concluded that because Longview Energy's equitable relief totaling \$95.5 million in a breach of fiduciary claim could not be characterized as compensatory damages, the defendant Huff Energy was not required to post a supersedeas bond for them in order to pursue an appeal of the trial court's ruling. Although the SCOT did not explicitly reach the issue of whether the cap applies on a per judgment basis, Justice Hecht's analysis concludes that the \$25 million cap enacted in 2003 was intended to make supersedeas bonds easier for judgment debtors to obtain.

6. *Occidental Chemical Corporation v. Jason Jenkins* (13-0961)

This important case involves the interpretation of the 10-year statute of repose for claims against persons who construct or repair real property. The First District Court of Appeals (Houston) ruled that the statute of repose does not apply to a premises owner that performs construction work directly and through third party contractors. The decision thus nullifies the statute if a third party hired by the owner performs any part of the construction or repair. TCJL argues that the Court of Appeals' interpretation of the statute would radically and adversely alter ordinary industry practices in Texas and potentially threaten the viability of major construction projects in the state. The SCOT will hear oral argument on September 3.

7. *Lower Colorado River Authority v. City of*

Boerne, Texas; consolidated for briefing with City of Seguin, Texas v. Lower Colorado River Authority (14-0079 and 14-0158)

These cases raise the issue of the scope of a local government's sovereign immunity in breach of contract cases. The Austin Court of Appeals ruled that cities have no immunity when a breach of contract claim constitutes a "proprietary" rather than a governmental interest. TCJL's brief urged the SCOT to reverse the Court of Appeals because the Legislature, the appropriate forum for a public policy debate over the extent of governmental immunity, has thus far declined to grant a specific waiver of immunity for proprietary functions in contract cases. The parties settled the lawsuits, and the SCOT dismissed the case without reaching the merits.

Dan Patrick Luncheon

July 2014 • San Antonio



Bo Gilbert (USAA), Richard Ponder (Johnson & Johnson), Walter Fisher (Texas Civil Justice League), Lt. Governor Dan Patrick, Steve Perry (Chevron)



John Fainter (Association of Electric Companies of Texas), Lt. Governor Dan Patrick



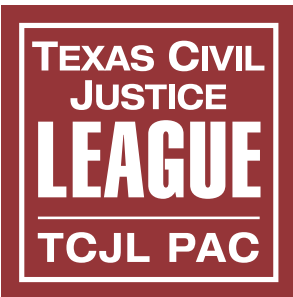
John Fainter (Association of Electric Companies of Texas), Lt. Governor Dan Patrick, Lisa Kaufman (Texas Civil Justice League)

“What’s on the Web?”



tcjl.com

- Up-to-date articles and information of interest
- Legislative resources and summaries
- Amicus briefs
- TCJL staff and board information
- TCJL publications back to 1988



tcjlpac.com

- Up-to-date articles and information of interest
- Calendar for all political events, fundraisers, elections, session info, etc
- TCJL PAC endorsements & press releases
- Full details on races and candidates for:
 - Statewide
 - Senate
 - House
 - Judges, including a link to judicial candidate comparison on texasjudges.org



texasjudges.org

- Up-to-date articles and information of interest
- Information on judges and judicial candidates for:
 - Supreme Court of Texas
 - Texas Court of Criminal Appeals
 - Texas Courts of Appeals
 - Texas Court Structure
 - Judicial Elections History
- Details on races and candidates for the above courts, plus district court races
- Comparisons of Judicial Candidates



[@tcjl86](https://twitter.com/tcjl86)
[@texasjudges](https://twitter.com/texasjudges)

The Facebook logo, consisting of the word "facebook" in a white, lowercase, sans-serif font on a dark blue rectangular background.

facebook.com/tcjl86

84TH LEGISLATURE

Texas Senate

www.senate.state.tx.us

SD1 Kevin Eltife (R-Tyler)
SD2 Bob Hall (R-Canton)
SD3 Robert Nichols (R-Jacksonville)
SD4 Brandon Creighton (R-Conroe)
SD5 Charles Schwertner (R-Georgetown)
SD6 Sylvia Garcia (D-Houston)
SD7 Paul Bettencourt (R-Houston)
SD8 Van Taylor (R-Plano)
SD9 Kelly Hancock (R-North Richland Hills)
SD10 Konni Burton (R-Colleyville)
SD11 Larry Taylor (R-Friendswood)
SD12 Jane Nelson (R-Flower Mound)
SD13 Rodney Ellis (D-Houston)
SD14 Kirk Watson (D-Austin)
SD15 John Whitmire (D-Houston)
SD16 Don Huffines (R-Dallas)
SD17 Joan Huffman (R-Southside Place)
SD18 Lois Kolkhorst (R-Brenham)
SD19 Carlos Uresti (D-San Antonio)
SD20 Juan "Chuy" Hinojosa (D-McAllen)
SD21 Judith Zaffirini (D-Laredo)
SD22 Brian Birdwell (R-Granbury)
SD23 Royce West (D-Dallas)
SD24 Troy Fraser (R-Horseshoe Bay)
SD25 Donna Campbell (R-New Braunfels)
SD26 José Menéndez (D-San Antonio)
SD27 Eddie Lucio, Jr. (D-Brownsville)
SD28 Charles Perry (R-Lubbock)
SD29 José Rodríguez (D-El Paso)
SD30 Craig Estes (R-Wichita Falls)
SD31 Kel Seliger (R-Amarillo)

Texas House of Representatives

www.house.state.tx.us

Joe Straus III, Speaker of the House
(HD121 R-San Antonio)

HD1 Gary VanDeaver (R-New Boston)
HD2 Dan Flynn (R-Van)
HD3 Cecil Bell, Jr. (R-Magnolia)
HD4 Stuart Spitzer (R-Kaufman)
HD5 Bryan Hughes (R-Mineola)
HD6 Matt Schaefer (R-Tyler)
HD7 David Simpson (R-Longview)
HD8 Byron Cook (R-Corsicana)
HD9 Chris Paddie (R-Marshall)
HD10 John Wray (R-Waxahachie)
HD11 Travis Clardy (R-Nacogdoches)
HD12 Kyle Kacal (R-Bryan)
HD13 Leighton Schubert (R-Caldwell)
HD14 John Raney (R-College Station)
HD15 Mark Keough (R-The Woodlands)
HD16 Will Metcalf (R-Conroe)
HD17 John Cyrier (R-Lockhart)
HD18 John Otto (R-Dayton)
HD19 James White (R-Hillister)

HD20 Marsha Farney (R-Georgetown)
HD21 Dade Phelan (R-Beaumont)
HD22 Joe Deshotel (D-Beaumont)
HD23 Wayne Faircloth (R-Galveston)
HD24 Greg Bonnen (R-Friendswood)
HD25 Dennis Bonnen (R-Angleton)
HD26 Rick Miller (R-Sugar Land)
HD27 Ron Reynolds (D-Missouri City)
HD28 John Zerwas (R-Richmond)
HD29 Ed Thompson (R-Pearland)
HD30 Geanie Morrison (R-Victoria)
HD31 Ryan Guillen (D-Rio Grande City)
HD32 Todd Hunter (R-Corpus Christi)
HD33 Scott Turner (R-Frisco)
HD34 Abel Herrero (D-Robstown)
HD35 Oscar Longoria (D-Mission)
HD36 Sergio Muñoz, Jr. (D-Mission)
HD37 René Oliveira (D-Brownsville)
HD38 Eddie Lucio III (D-Brownsville)
HD39 Armando "Mando" Martinez (D-Weslaco)
HD40 Terry Canales (D-Edinburg)
HD41 Bobby Guerra (D-Mission)
HD42 Richard Raymond (D-Laredo)
HD43 J.M. Lozano (R-Falfurrias)
HD44 John Kuempel (R-Seguin)
HD45 Jason Isaac (R-Dripping Springs)
HD46 Dawnna Dukes (D-Austin)
HD47 Paul Workman (R-Austin)
HD48 Donna Howard (D-Austin)
HD49 Elliott Naishtat (D-Austin)
HD50 Celia Israel (D-Austin)
HD51 Eddie Rodriguez (D-Austin)
HD52 Larry Gonzales (R-Round Rock)
HD53 Andrew Murr (R-Junction)
HD54 Jimmie Don Aycock (R-Killeen)
HD55 Molly White (R-Belton)
HD56 Charles "Doc" Anderson (R-Waco)
HD57 Trent Ashby (R-Lufkin)
HD58 DeWayne Burns (R-Cleburne)
HD59 J.D. Sheffield (R-Gatesville)
HD60 Jim Keffer (R-Eastland)
HD61 Phil King (R-Weatherford)
HD62 Larry Phillips (R-Sherman)
HD63 Tan Parker (R-Flower Mound)
HD64 Myra Crownover (R-Denton)
HD65 Ron Simmons (R-Carrollton)
HD66 Matt Shaheen (R-Plano)
HD67 Jeff Leach (R-Plano)
HD68 Drew Springer (R-Muenster)
HD69 James Frank (R-Wichita Falls)
HD70 Scott Sanford (R-McKinney)
HD71 Susan King (R-Abilene)
HD72 Drew Darby (R-San Angelo)
HD73 Doug Miller (R-New Braunfels)
HD74 Poncho Nevárez (D-Eagle Pass)
HD75 Mary González (D-Clint)
HD76 César Blanco (D-El Paso)
HD77 Marisa Márquez (D-El Paso)
HD78 Joe Moody (D-El Paso)
HD79 Joe Pickett (D-El Paso)
HD80 Tracy King (D-Batesville)
HD81 Brooks Landgraf (R-Odessa)
HD82 Tom Craddick (R-Midland)
HD83 Dustin Burrows (R-Lubbock)
HD84 John Frullo (R-Lubbock)
HD85 Phil Stephenson (R-Wharton)
HD86 John Smithee (R-Amarillo)
HD87 Four Price (R-Amarillo)
HD88 Ken King (R-Canadian)
HD89 Jodie Laubenberg (R-Parker)
HD90 Ramon Romero Jr. (D-Fort Worth)
HD91 Stephanie Klick (R-Fort Worth)
HD92 Jonathan Stickland (R-Bedford)
HD93 Matt Krause (R-Fort Worth)
HD94 Tony Tinderholt (R-Arlington)
HD95 Nicole Collier (D-Fort Worth)
HD96 Bill Zedler (R-Arlington)
HD97 Craig Goldman (R-Fort Worth)
HD98 Giovanni Capriglione (R-Southlake)
HD99 Charlie Geren (R-Fort Worth)
HD100 Eric Johnson (D-Dallas)
HD101 Chris Turner (D-Arlington)
HD102 Linda Koop (R-Dallas)
HD103 Rafael Anchia (D-Dallas)
HD104 Roberto Alonzo (D-Dallas)
HD105 Rodney Anderson (R-Grand Prairie)
HD106 Pat Fallon (R-Frisco)
HD107 Kenneth Sheets (R-Dallas)
HD108 Morgan Meyer (R-Dallas)
HD109 Helen Giddings (D-Desoto)
HD110 Toni Rose (D-Dallas)
HD111 Yvonne Davis (D-Desoto)
HD112 Angie Chen Button (R-Garland)
HD113 Cindy Burkett (R-Mesquite)
HD114 Jason Villalba (R-Dallas)
HD115 Matt Rinaldi (R-Irving)
HD116 Trey Martinez Fischer (D-San Antonio)
HD117 Rick Galindo (R-San Antonio)
HD118 Joe Farias (D-San Antonio)
HD119 Roland Gutierrez (D-San Antonio)
HD120 Ruth Jones McClendon (D-San Antonio)
HD121 Joe Straus (R-San Antonio)
HD122 Lyle Larson (R-San Antonio)
HD123 Diego Bernal (D-San Antonio)
HD124 Ina M. Minjarez (D-San Antonio)
HD125 Justin Rodriguez (D-San Antonio)
HD126 Patricia Harless (R-Spring)
HD127 Dan Huberty (R-Houston)
HD128 Wayne Smith (R-Baytown)
HD129 Dennis Paul (R-Houston)
HD130 Allen Fletcher (R-Tomball)
HD131 Alma Allen (D-Houston)
HD132 Mike Schofield (R-Katy)
HD133 Jim Murphy (R-Houston)
HD134 Sarah Davis (R-West University Place)
HD135 Gary Elkins (R-Houston)
HD136 Tony Dale (R-Cedar Park)
HD137 Gene Wu (D-Houston)
HD138 Dwayne Bohac (R-Houston)
HD139 Sylvester Turner (D-Houston)
HD140 Armando Walle (D-Houston)
HD141 Senfronia Thompson (D-Houston)
HD142 Harold Dutton, Jr. (D-Houston)
HD143 Ana Hernandez Luna (D-Houston)
HD144 Gilbert Peña (R-Pasadena)
HD145 Carol Alvarado (D-Houston)
HD146 Borris Miles (D-Houston)
HD147 Garnet Coleman (D-Houston)
HD148 Jessica Farrar (D-Houston)
HD149 Hubert Vo (D-Houston)
HD150 Debbie Riddle (R-Tomball)

East Texans Against Lawsuit Abuse Receives 2015 Best of Longview Award

Longview Award Program Honors the Achievement

East Texans Against Lawsuit Abuse has been selected for the 2015 Best of Longview Award in the “Organizations” category by the Longview Award Program.

Each year, the Longview Award Program identifies companies that we believe have achieved exceptional marketing success in their local community and business category. These are local companies that enhance the positive image of small business through service to their customers and our community. These exceptional companies help make the Longview area a great place to live, work and play.

Various sources of information were gathered and analyzed to choose the winners in each category. The 2015 Longview Award Program focuses on quality, not quantity. Winners are determined based on the information gath-



ered both internally by the Longview Award Program and data provided by third parties.

About Longview Award Program

The Longview Award Program is an annual awards program honoring the achievements and accomplishments of local businesses throughout the Longview area. Recognition is given to those companies that have shown the ability to use their best practices and implemented programs to generate competitive advantages and long-term value.

The Longview Award Program was estab-



Diane Davis
Executive Director,
ETALA



Ruben Martin
Chairman,
ETALA

lished to recognize the best of local businesses in our community. Our organization works exclusively with local business owners, trade groups, professional associations and other business advertising and marketing groups. Our mission is to recognize the small business community's contributions to the U.S. economy.

TCJL PAC Report

For the first time in many years, the 2014 election cycle resulted in new statewide officials in almost every seat. The 2016 election cycle will be dominated by legislative races, along with at least one high-profile Supreme Court race.

Three incumbent Texas Supreme Court justices — Paul Green (R), Eva Guzman (R), and Debra Lehrmann (R) — face re-election next year. Judging from the past few election cycles, it will be surprising if all three do not have at least a primary and/or general election opponent. Thus far, Justice Michael Massengale (R) of the 1st Court of Appeals in Houston has already announced a primary challenge against Justice Lehrmann. The deadline for candidates to file for a place on the primary ballot is in December of this year, so there is still plenty of time for other challengers to materialize.

The 14 Courts of Appeals total 80 justices, and about 20 will be on the ballot next year.

Several have announced their intent to seek re-election, and it is expected that most will follow suit. TCJL PAC will, once again, tackle the challenge of educating Texas voters about the importance of these races to the state's economic future. As the filing deadline draws near, TCJL PAC members will receive more information on the candidates and endorsements by the PAC. Information on races and candidates is posted as it becomes available on www.tcjlpac.com and www.texasjudges.org.

In addition to these critically important judicial offices, all 150 seats in the Texas House of Representatives will be on the ballot. Ten House members have already announced their retirement, and several challengers have announced campaigns against incumbent members. In the Texas Senate, stalwarts Troy Fraser (R-Horseshoe Bay) and Kevin Eltife (R-Tyler) are not running for re-election. Both districts have already generated a great deal of

interest from aspiring candidates, including some current House members looking to move up to the Senate. In addition to the Eltife and Fraser districts, 14 other Senate seats will appear on the ballot.

The total picture will not be settled until the filing deadline in December 12, but it is likely that we will see a significant turnover in both the House and Senate.

With this many judicial and legislative races, TCJL PAC's resources will be stretched to the limit. Please consider contributing to the PAC's efforts to support judicial and legislative candidates who share our commitment to a fair and balanced civil justice system. The PAC accepts contributions from individuals and other PACs, and every little bit helps. For those of you who have supported the PAC in the past, we deeply appreciate your continued dedication to preserving and enhancing the progress we have made in the last quarter century.

Judicial Places on 2016 Ballot

See tcjlpac.com for judicial race updates and TCJL PAC endorsements.*

See texasjudges.org for comparisons of judicial candidates.

Texas Supreme Court

- Place 3Debra Lehrmann* (R)
- Place 5Paul Green* (R)
- Place 9Eva Guzman* (R)

Texas Court of Criminal Appeals

- Place 2Lawrence Meyers* (D)
- Place 5Cheryl Johnson* (R)
- Place 6Michael Keasler* (R)

First Court of Appeals - 9 justices, 10 counties, based in Houston

- Chief JusticeSherry Radack* (R)
- Place 4Evelyn Keyes* (R)

Second Court of Appeals - 7 justices, 12 counties, based in Fort Worth

- Place 3Anne Gardner* (R)
- Place 4Bonnie Sudderth* (R)

Third Court of Appeals - 6 justices, 24 counties, based in Austin

- Place 2Cindy Bourland* (R)
- Place 4Melissa Goodwin* (R)

Fourth Court of Appeals - 7 justices, 32 counties, based in San Antonio

- Place 6Jason Pulliam* (R)

Fifth Court of Appeals - 13 justices, 6 counties, based in Dallas

- Place 4Lana Myers* (R)
- Place 7David Schenck* (R)

Sixth Court of Appeals - 3 justices, 19 counties, based in Texarkana

- Chief JusticeJosh Morriss III* (R)

Seventh Court of Appeals - 4 justices, 46 counties, based in Amarillo

- Place 4James T. Campbell* (R)

Eighth Court of Appeals - 3 justices, 17 counties, based in El Paso

- Place 3Steven Hughes* (R)

Ninth Court of Appeals - 4 justices, 10 counties, based in Beaumont

- Place 2Charles Kreger* (R)

Tenth Court of Appeals - 3 justices, 18 counties, based in Waco

- Place 3Al Scoggins* (R)

Eleventh Court of Appeals - 3 justices, 28 counties, based in Eastland

- Place 3John Bailey* (R)

Twelfth Court of Appeals - 3 justices, 17 counties, based in Tyler

- Place 2Brian Hoyle* (R)
- Place 3Greg Neeley* (R)

Thirteenth Court of Appeals -

6 justices, 20 counties, based in Corpus Christi/Edinburg

- Place 3Gregory Perkes* (R)

Fourteenth Court of Appeals - 9 justices, 10 counties, based in Houston

- Place 2Sharon McCally* (R)
- Place 9Tracy Christopher* (R)

* Candidate filing deadline is in December, 2015.



**Fourth Court of Appeals Justice Jason Pulliam,
Supreme Court Justice Paul Green**



**Red McCombs (TCJL PAC Chairman),
Carol Sims (Texas Civil Justice League)**

2016 Election Dates

Primary Election: Tuesday, March 1, 2016

Primary Runoff: Tuesday, May 24, 2016

General Election: Tuesday, November 8, 2016

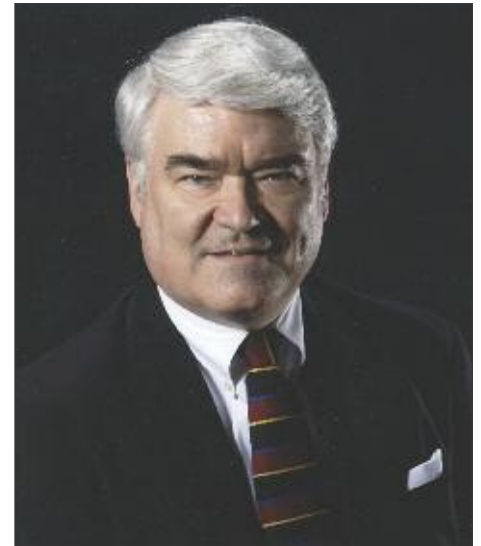
SCOT Docket Clear: No Cases Held Over Until Next Term

*Gone are the backlogs of the past, and with them
the uncertainty and cost associated with delayed justice.*

On June 27 the Texas Supreme Court issued its final eight opinions of its current term — more than a month ahead of schedule. And for the first time since the Court began counting in the early 1990's, no cases have been held over until next term.

Under the exceptional leadership of former Chief Justice Wallace Jefferson and his successor Chief Justice Nathan Hecht, the SCOT has not only become one of the nation's most scholarly and well-respected high courts, but one of the hardest working and most efficient as well. Gone are the backlogs of the past, and with them the uncertainty and cost associated with delayed justice.

Although high turnover on the Court certainly contributed to the backlog in the mid-2000's, we commend the members of the Court for their commitment and dedication to reducing and finally eliminating this problem once and for all. While we recognize that some backlog may recur in the future under unavoidable circumstances, this Court deserves credit for emphasizing the importance of timely disposition to the fair and impartial administration of justice. The individuals, businesses, local governments, and others whose legal rights, privileges, and immunities hang in suspense during the litigation and appeals process appreciate the Court's wonderful achievement.



Chief Justice Nathan Hecht

2015 LEGISLATORS OF THE YEAR

continued from page 1



**Senator Kelly Hancock
(R – North Richland Hills)**

A successful businessman and former House member, Senator Kelly Hancock has quickly become one of the Senate's foremost pro-business leaders on issues ranging from regulatory reform to taxation. This session Sen. Hancock successfully navigated HB 1794 through Senate committee and floor debate, while at the same time negotiating a key amendment to the bill to protect Texas' delegation of authority from EPA. We deeply appreciate Sen. Hancock's leadership in the Senate and look forward to working with him in future sessions to make the Texas business climate even better.



**Representative Wayne Smith
(R – Baytown)**

A veteran pro-business leader in the House on environmental policy, Representative Wayne Smith authored HB 1247, a critical piece of the broader environmental contested case hearing reform legislation in 2015 (SB 709). Rep. Smith's bill requires a protesting party in a contested case to establish that the applicant's permit does not meet specific legal and technical requirements. HB 1247 puts Texas law back in the national mainstream and removes an unnecessary, expensive, and time-consuming barrier to environmental permitting. We are grateful for Rep. Smith's exceptional leadership and dedication to fair, common sense environmental policies.



Representative Paul Workman (R – Austin)

A successful businessman and three-term member of the House, Representative Paul Workman serves on the important House Insurance and House Natural Resources Committees. In 2015, he authored HB 1668, which corrects an erroneous court of appeals ruling questioning longstanding statutory authority allowing general contractors to provide workers' compensation insurance to subcontractors and their employees. Rep. Workman is one of the Texas House's staunchest pro-business members and a tireless advocate for a fair and balanced regulatory and judicial system. He brings a wealth of business experience and community involvement to policymaking, critical assets in today's political environment.

2015 LEGISLATORS OF THE YEAR



Senator Troy Fraser (R-Horseshoe Bay)

A longtime pro-business champion in the Texas Senate, Senator Troy Fraser authored and passed this session's sweeping contested case hearing reform legislation. SB 709 (includes the substance of TCJL's HB 1247 and HB 1113/SB 941) significantly streamlines the environmental permitting process. Sen. Fraser also authored SB 735, requiring a plaintiff to show a "substantial likelihood of success on the merits" in order to get discovery of net worth evidence for purposes of punitive damages. Senator Fraser has announced his retirement from the Senate, and his tireless leadership and unstinting advocacy for a strong and vibrant business climate will be sorely missed.



Representative Geanie Morrison (R - Victoria)

Since her election to the Texas House in 1998, Representative Geanie Morrison has become one of the House's most effective and versatile members. During her tenure she has chaired numerous key committees, including Higher Education, Elections, and Environmental Regulation. As chair of Environmental Regulation this session, she successfully carried and passed SB 709 in the House and assisted Rep. Geren in winning final passage of HB 1794. Rep. Morrison's pro-business philosophy and proven ability to carry major legislation through difficult floor debates have earned her a well-deserved place among the top House leaders.



Representative Travis Clardy (R - Nacogdoches)

A practicing defense lawyer with decades of trial experience, Representative Travis Clardy has in only two sessions become one of the Texas House's most outstanding rising leaders in critical policy areas such as higher education, legal reform, and the budget. In 2015, Rep. Clardy authored one of the most difficult and important components of contested case hearing reform, HB 1113. Rep. Clardy's bill clarifies the TCEQ process for determining which parties have standing in a contested case proceeding and was passed as part of the comprehensive approach in SB 709. He also served with great distinction on the House Judiciary & Civil Jurisprudence Committee, helping successfully negotiate asbestos bankruptcy trust and net worth discovery reforms.



Senator Kevin Eltife (R - Tyler)

Since his election to the Texas Senate in 2003, Senator Kevin Eltife has championed sound fiscal policy, economic development, and adequate funding of critical infrastructure. As Chair of the Senate Business & Commerce Committee this session, he played a key role in moving forward hailstorm insurance reform legislation (SB 1628 by Sen. Larry Taylor, R-Friendswood). He also carried SB 666, the Senate companion to HB 1668 by Workman, for which we are particularly grateful. Following another successful session, Sen. Eltife announced that he would not seek re-election next year. The loss of Sen. Eltife's bipartisanship and farsighted leadership will not be easily made up. We wish him well in the future and hope that he will continue his involvement in public life to the benefit of all Texans.



Senator Joan Huffman (R - Houston)

As Chair of the Senate State Affairs Committee, Senator Joan Huffman presided over some of the most important bills of the legislative session and proved to be a formidable and effective leader on business issues. A former felony prosecutor and criminal district judge, Sen. Huffman brings both a tough-minded approach and a balanced judicial temperament to legal reform issues. She successfully shepherded TCJL's *forum non conveniens* bill through Senate committee and floor debate this session, and we look forward to her outstanding leadership in the Senate for many years to come.



Senator Brandon Creighton (R - Conroe)

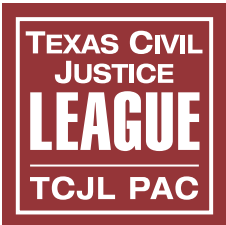
An attorney, businessman, and former House member, Senator Brandon Creighton hit the ground running in his first session in the Senate. He authored the Senate companion to HB 1113 (SB 941), key property tax legislation that broke the impasse between the House and Senate on tax relief, and other pro-business legislation. As a House member, Sen. Creighton also successfully authored Governor Perry's 2011 tort reform initiative. We are extremely fortunate that Sen. Creighton has taken his experience and leadership in legal reform issues to the Texas Senate, and we look forward to working with him on civil justice issues in future sessions.



Texas Civil Justice League
 400 West 15th Street, Suite 1400
 Austin, TX 78701

PRST STD
 US POSTAGE
PAID
 AUSITN, TX
 PERMIT NO. 525

Please consider contributing to the TCJL PAC efforts to support judicial and legislative candidates who share our commitment to a fair and balanced civil justice system.



**YES! I WANT TO ENCOURAGE
 MORE JOBS, NOT LAWSUITS.**

Enclosed is my contribution to TCJL PAC. \$ _____
PLEASE MAKE CHECKS PAYABLE TO TCJL PAC.

NAME _____
 MAILING ADDRESS _____
 CITY _____ STATE _____ ZIP _____
 PHONE _____ EMAIL _____
 *EMPLOYER _____ *OCCUPATION _____

If contributing by mail:
 TCJL PAC
 400 West 15th Street
 Suite 1400
 Austin, TX 78701

To contribute online, visit:
www.tcjlpac.com

Email:
info@tcjlpac.com

Phone:
 512.320.0474

** This information required for reporting purposes. Corporate checks may be accepted for administrative purposes only and cannot be used for political activity.
 Political advertising paid for by Texas Civil Justice League PAC, Carol Sims, Treasurer, 400 West 15th Street, Suite 1400, Austin, TX 78701*