TEXAS CIVIL JUSTICE LEAGUE

JOURNAL

Fall 2014

INSIDE

Greg Abbott: A Blueprint for Growth

Texas is a jobs-creating machine and Texans are the force that powers it. I will be the Governor who keeps it that way.

I know I am preaching to the choir when I tell you jobs grow where free enterprise flourishes and government is restrained. Legal reforms enacted with the support of the Texas Civil Justice League have helped Texas lead the nation in job creation, in oil and natural gas production, in exports and more.

Less government, low taxes, smarter regulations and right-to-work laws—not government mandates—these are the pro-growth economic policies that help free enterprise flourish here, that help businesses expand here and that attract more major employers to Texas every day from states that over-tax and over-regulate.

One CEO shared with me his reasons for relocating his business to the Dallas area. He told me regulations in California were out of control, taxes there were too high and unions had "virtually hijacked the state." He looked at every state and, in looking at bottom line, he chose Texas. But what he did not realize until he got here is that there is something far more valuable about Texas, something he and his family had never experienced: the true sense of freedom Texans enjoy.

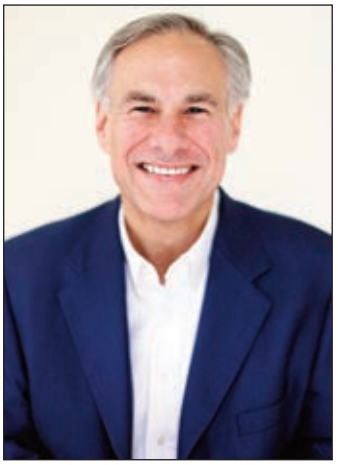
That freedom also means more Texas entrepreneurs are willing to risk their capital to invest in themselves and others by opening businesses large and small.

Texas is exceptional, but there is more we can do.

There is more I will do as Governor to build a Texas that is better, brighter and stronger.

I have crafted a blueprint for a new era of economic expansion in Texas.

My plan invests in the tools of self-sufficiency—



Attorney General Greg Abbott

quality schools, more roads and abundant water—and empowers both businesses and individuals by focusing on reducing taxes and regulations and on speeding the permitting process. My plan controls the growth of government in order to stimulate the private sector, so jobs continue to grow and wages continue to rise for even higher standards of living across the state.

As Governor, I will continue to fight for the integrity and vitality of our electoral process. And as vacancies occur, I will appoint impartial, qualified and knowledgeable judges who exercise judicial restraint and respect the rule of law.

I invite you to read all of my plans at www.TexasBlueprint.com.

Working together, we will keep Texas growing.

Greg Abbott is the Texas Attorney General and Republican gubernatorial candidate. ★

Texas Civil Justice League 28th Annual Meeting

Thursday, November 6, 2014 • 3:00 – 6:00

Moody Bank (formerly Wells Fargo) Tower Auditorium • 400 W. 15th Street, 3rd Floor • Austin, TX 78701

Details may be found at www.tcjl.com • Please RSVP to rsvp@tcjl.com

TEXAS CIVIL JUSTICE LEAGUE

STAFF

Carol Sims
Executive Director

Lisa Kaufman
General Counsel

George Christian
Senior Counsel

Annette Mitrosz
Project/Event Manager

Lauren Sides
Social Media Coordinator

Alicia Glover
Comptroller

ADVISORS

Walter Fisher

Shannon Ratliff

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 – Secretary

Bo Gilbert
USAA
TCJL Executive Committee - Treasurer

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

Robert Looney
Texas Oil & Gas Assn.
TCJL Executive Committee

Bennett Sandlin
Texas Municipal League
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

Jayme Cox
Shell Oil Co.

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.

Dennis Kearns
BNSF Railway

Gaspar X. Laca
GlaxoSmithKline

Steve Perry
Chevron

Richard Ponder
Johnson & Johnson

Julio Reyes
AEP Texas

Leslie Ward
AT&T

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

Jack Dillard Retires from Altria

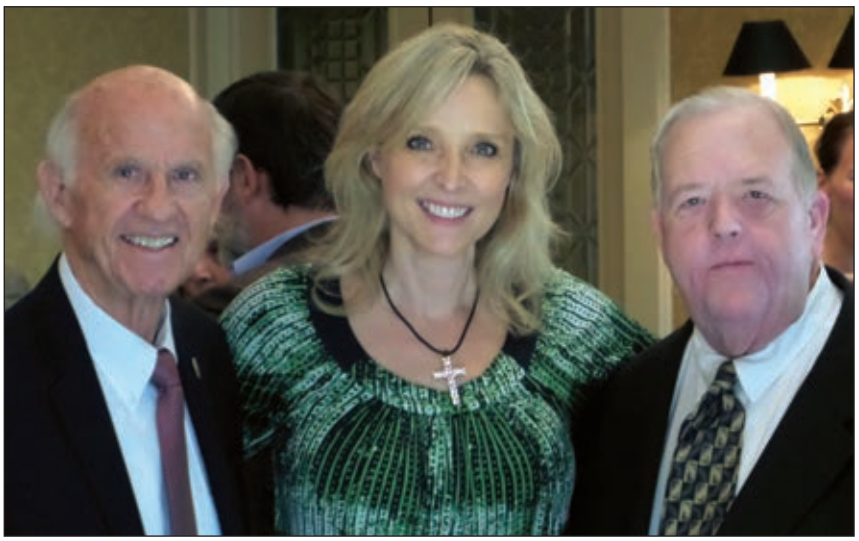
TCJL & TTARA thank him for his many years of service to TCJL and the Texas Taxpayers & Research Association

Bill Oswald, Rob Looney

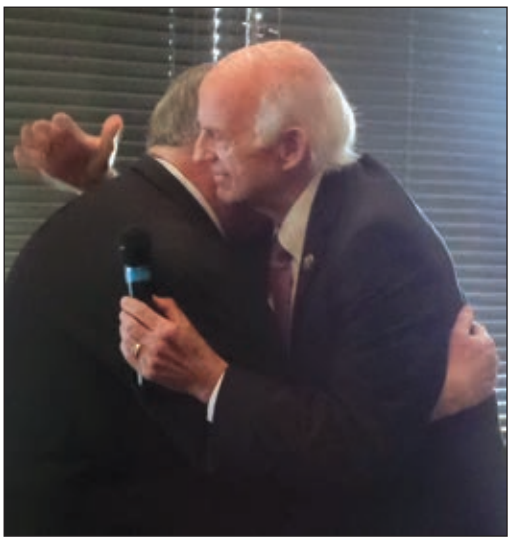
Eric Donaldson, Betsy Giles, Jack Dillard

Walter Fisher, Lisa Kaufman, Jack Dillard

Betsy Christian, George Christian, John Fainter, Lisa Kaufman, Jack Dillard, Dale Craymer

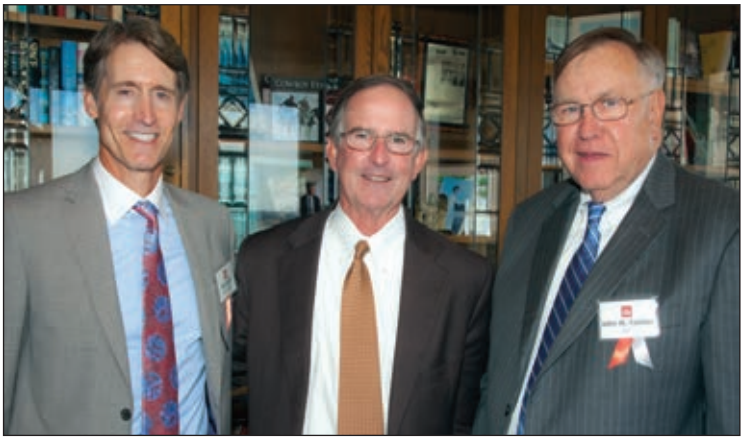


Ralph Wayne, Carol Sims, Jack Dillard



Jack Dillard, Ralph Wayne

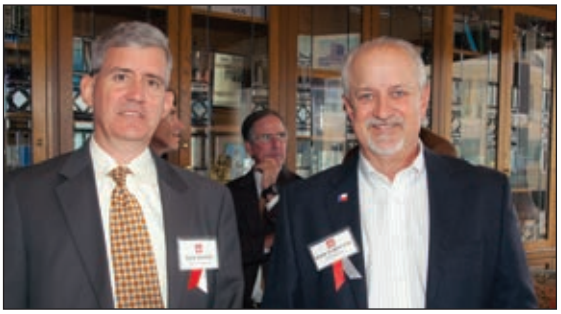
TCJL 27th Annual Meeting



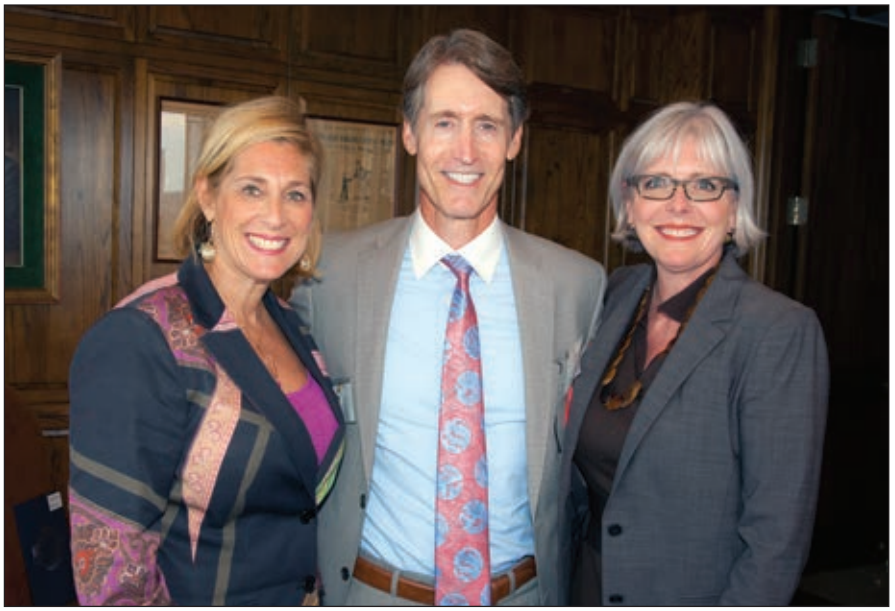
Bill Oswald, Walter Fisher, John Fainter

Rep. Four Price

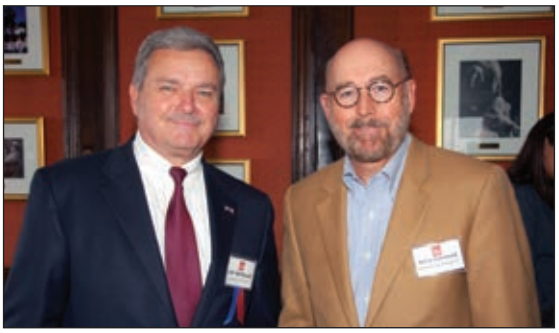
Dr. John Coppedge



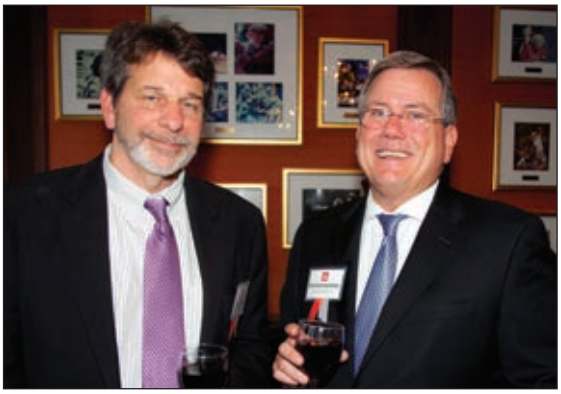
Gary Barrett, Dave Cagnolatti



Lisa Kaufman, Bill Oswald, Jayme Cox



Honorable Bill Stoudt, Kerry Cammack



Jay Gibson, Richie Jackson

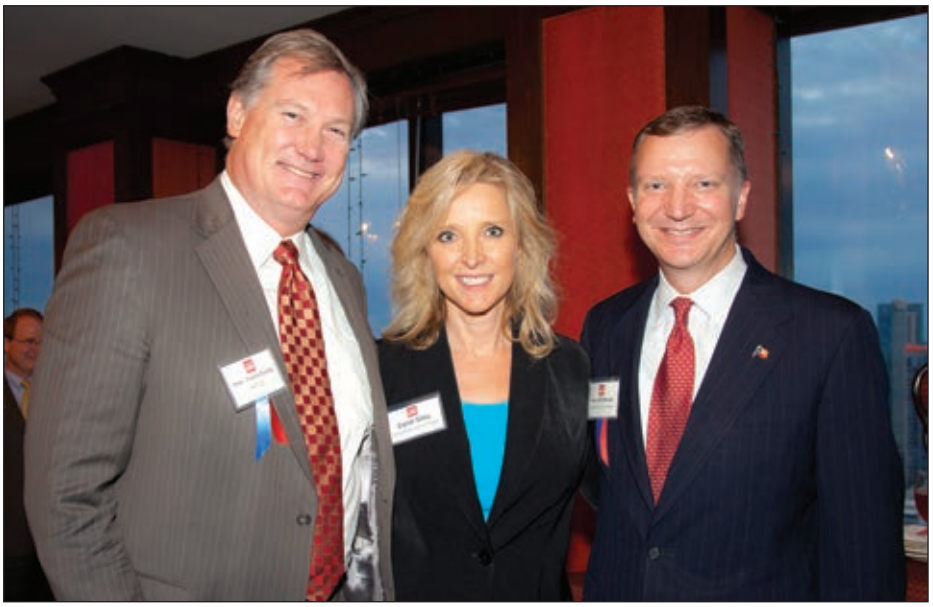
Gary Barrett, Dave Cagnolatti, Rob Looney

November 7, 2013

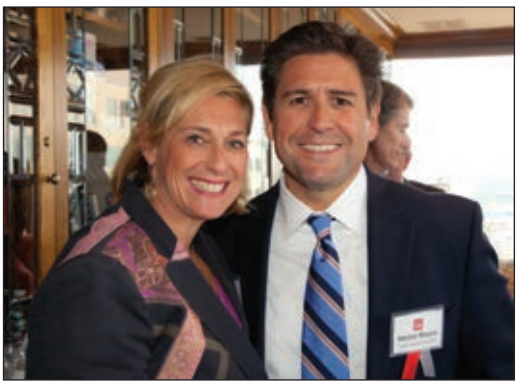
Hon. Bud Kirkendall, Hon. Barbara Walther, Hon. Bert Richardson, David Newell, Kevin Yeary

Rep. Myra Crownover

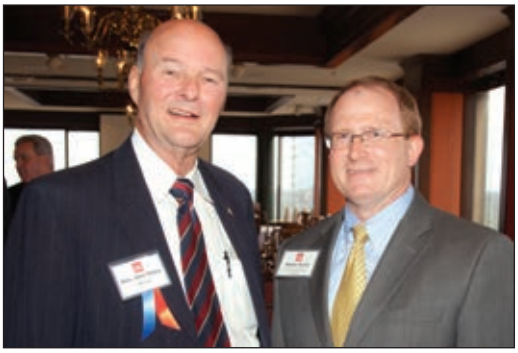
Julie Klumpyan, Victoria Waddy



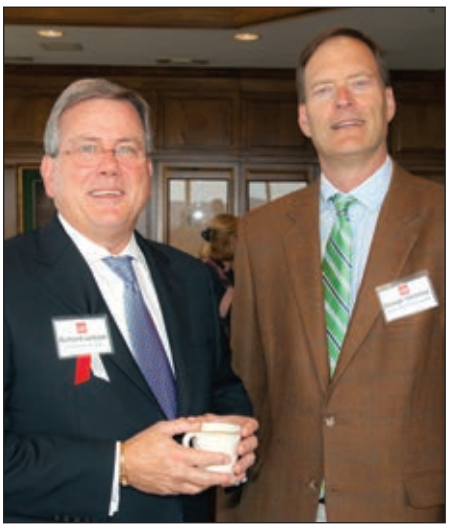
Rep. Travis Clardy, Carol Sims, Justice Jeff Brown



Lisa Kaufman, Hector Rivero



Rep. John Raney, Kevin Yeary



Richie Jackson, George Christian

Legislator of the Year Award Recipients:

Senator Juan "Chuy" Hinojosa

Representative Doug Miller

Representative Four Price

Representative Kenneth Sheets

Representative Myra Crownover

Representative Travis Clardy

Representative Tryon Lewis

"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
- Judges, including a link to judicial candidate comparison on texasjudges.org
- Full details on races and candidates for:
  - Statewide
  - Senate
  - House

texasjudges.org

TEXAS CIVIL JUSTICE LEAGUE

- 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 District Courts of Appeals
  - Texas Court Structure
  - Judicial Elections History
- Details on races and candidates for the above courts, plus district court races
- Comparisons of 2014 Judicial Candidates

jobsfortexaspac.com

JOBS FOR TEXAS POLITICAL ACTION COMMITTEE

- Up-to-date articles and information of interest
- Comparisons of Supreme Court Judicial Candidates for 2014
- JOBSPAC Endorsements

@tcjl86

facebook.com/tcjl86

TCJL PAC Endorsements for Texas Supreme Court

Chief Justice Hecht, Justices Brown and Boyd Face November Challenges

Three Texas Supreme Court justices, including recently appointed Chief Justice Nathan Hecht, have credible Democratic opponents in the upcoming November election.

Chief Justice Nathan Hecht

Chief Justice Hecht faces El Paso District Judge Bill Moody, who is making his fourth campaign for a seat on the high court, and Libertarian candidate Tom Oxford. Moody's most recent attempt in 2010 ended in his substantial defeat at the hands of incumbent Justice Don Willett. Chief Justice Hecht is seeking a full six-year term. The Chief Justice overcame a dangerous challenge from former State Rep. Robert Talton in the GOP primary. **TCJL PAC Endorsement: Chief Justice Nathan Hecht.**

Governor Perry's most recent appointee to the Court, Justice Jeff Brown defeated attorney Joe Pool in the Republican primary and will face longtime Court of Criminal Appeals Judge Larry Meyers in November. One of the first Republicans to be elected to a statewide judicial office, Judge Meyers switched parties in order to challenge Justice Brown for Place 6 on the court. There is also a Libertarian candidate in the race, Mark Ash. **TCJL PAC Endorsement: Justice Jeff Brown.**

Justice Jeff Brown

In Place 7, Justice Jeff Boyd has three opponents: 13th Court of Appeals Justice Gina Benavides, Libertarian Don Fulton, and Green Party candidate Charles Waterbury. Justice Boyd was unopposed in the GOP primary. Of the four races, Justice Boyd's may be the toughest, given Justice Benavides' experience and ability to raise funds from the trial bar. We cannot afford to let this race slip between the cracks. **TCJL PACE Endorsement: Justice Jeff Boyd.**

Justice Jeff Boyd

After prevailing in a bruising primary campaign, Justice Phil Johnson faces only Libertarian and Green Party challengers Robert Koelsch and Jim Chisolm in November. **TCJL PAC Endorsement: Justice Phil Johnson**. ★

Justice Phil Johnson

TCJL PAC Endorses Appellate Court Candidates

Given the relatively few cases the Texas Supreme Court hears each year, Texas' fourteen courts of appeals act as the court of last resort for virtually all appeals of civil and criminal matters. As a practical matter, consequently, the judicial system is only as good as the appellate justices we elect each election cycle. Since its inception in 1986, TCJL has striven to raise voter awareness of the critical function of the courts of appeals in our system of government and the importance of carefully vetting courts of appeals candidates. At the same time, the TCJL PAC conducts its own review of these candidates and issues endorsements for each primary and general election in which contested courts of appeals races occur.

For the November 4 general election, the TCJL PAC endorses the following candidates:

Chief Justice, Third Court of Appeals (Austin):
Justice Jeff Rose (R)

Place 6, 13th Court of Appeals (Corpus Christi):
Justice Dori Contreras Garza (D)(I)

Chief Justice, 14th Court of Appeals (Houston):
Justice Kem Frost (R)(I)

Place 7, 14th Court of Appeals (Houston):
Justice Ken Wise (R)(I)

Chief Justice, 4th Court of Appeals (San Antonio):
Justice Sandee Bryan Marion (R)

TCJL Judges Project for 2014 Primary

During the spring primary campaign, TCJL launched a statewide voter education and get-out-the-vote campaign to encourage voter participation in the Republican primary. The voter education project indisputably and significantly increased voter retention for the Texas Supreme Court and other judicial races (see data below). In addition to boosting the absolute number of primary voters who stayed with the ballot, the data indicates that the growth in voter participation in judicial races can be directly linked to TCJL's primary campaign message that courts have a major impact on the daily lives and businesses of voters and that experienced judges are vital to the proper operation of the court system. This unprecedented result could not have occurred without TCJL's significant involvement.

- In 2010, of the 1,484,542 voters in the Republican primary, 25.5% of those in the ballot booth did NOT vote in the judicial races;
- In 2012, of the 1,449,477 voters in the Republican primary, 21.7% of those in the ballot booth did NOT vote in the judicial races;
- In 2014, of the 1,310,263 voters in the Republican primary, only 10.7% of those in the ballot booth did NOT vote in judicial races.

As this analysis indicates, votes cast in 2014 Supreme Court primary races increased 11-14% over the two previous cycles. TCJL's participation in these races clearly made a decisive difference in the outcome.

This fall TCJL will continue its efforts to educate voters about the importance of judicial elections and the vital necessity of maintaining an experienced and well qualified judiciary. Please help us to get the word out through your support of TCJL and the TCJL PAC.

TCJL PAC Endorses in Three State District Judge Races

Although the TCJL PAC rarely participates in elections at the trial court level, three races for district court benches warrant exceptions to the rule. Consequently, TCJL PAC has endorsed **District Judge Jaime Tijerina** for the 92nd District Court in Hidalgo County, **District Judge Patricia Kerrigan** for the 190th District in Harris County, and former **District Judge Reneé McElhaney** for the 150th District Court in Bexar County.

In the 92nd District Court, **Judge Tijerina** (R)(I) has drawn opposition from attorney Luis Manuel Singleterry (D). Judge Tijerina, who Governor Perry appointed to the bench last year, is one of the finest young trial judges in the state. A Lieutenant Colonel in the U.S. Army Reserves, he has served tours of duty in both Iraq and Afghanistan. Prior to going on the bench, he also served as the elected County Attorney of Kenedy County and has practiced law in South Texas since 1995. Judge Tijerina received his BBA from the University of Texas Pan American and his law degree from Texas Southern University. This race is of tremendous importance to the judiciary in South Texas and the state as a whole. We cannot allow partisan politics to sweep out someone with Judge Tijerina's exceptional experience, integrity, and character.

One of the few Republican judicial incumbents to buck the Democratic tide in Harris County, **Judge Kerrigan** (R)(I) has once again drawn an opponent with no judicial and little if any trial experience. Appointed by Governor Perry to the district bench in 2007, Judge Kerrigan won election to the unexpired term in 2008 and to a full term in 2010. She has won every bar poll since, and the Houston Press named her the best civil trial judge in Harris County. Board certified in personal injury trial law, Judge Kerrigan is the first woman to serve as President of the Texas Association of Defense Counsel and the Association of Defense Trial Attorneys. She has been active in the State Bar of Texas (serving as Chair of the Pattern Jury Charge Committee), as well as the Texas and Houston Bar Foundations. Judge Kerrigan is one of the best and most experienced trial judges in the state, and her re-election to the bench is essential.

Judge McElhaney (R) faces Democratic challenger Edna Elizonda for the open 150th District Court in San Antonio. Previously appointed by Governor Perry to the 73rd District Court, Judge McElhaney lost her bench in the 2012 Democratic courthouse sweep in Bexar County. During her time on the bench, she presided over a general docket consisting of all types of civil matters, from family law to commercial matters. Prior to her appointment to the bench, Judge McElhaney practiced trial and appellate law with Fulbright & Jaworski and Cox Smith and is currently a litigation partner in Beirne, Maynard & Parsons, LLP. A graduate of St. Mary's University School of Law, she taught public school for nine years before entering the legal profession. She is active in education, legal, and community organizations in Bexar County, teaches law at St. Mary's, and has authored hundreds of papers for continuing legal education seminars. She is board certified in appellate law. We need to put Judge McElhaney back on the bench. ★

UPCOMING EVENTS

2014 Election Dates

October 20-31, 2014:
Early Voting Period

November 4, 2014:
General Election

84th Texas Legislature

January 13, 2015:
84th Texas Legislative Session Convenes

June 1, 2015:
84th Regular Session Ends, *Sine Die*

ATRA Annual Conference for State Coalition Leaders

American Tort Reform Association
November 10-12, 2014
Marriott Coronado Island Resort & Spa
San Diego, California
CLE Credit
For Registration Information,
Please Contact
Geneva Carney
gcarney@atra.org
202-682-1163
OR
Matt Fullenbaum
mfullenbaum@atra.org
202-682-1163

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 16 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 whether, based on TCJL's nearly 30 years of experience in legislative and judicial issues, we believe 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 some recent decisions in cases in which TCJL participated as an *amicus*. All of TCJL's *amicus* briefs are available for review on the TCJL website.

Substantial Causation in Asbestos Mesothelioma Cases

In perhaps the most highly anticipated case this year, in July the Texas Supreme Court handed down a 6-3 decision in *Bostic v. Georgia-Pacific Corporation*. TCJL filed an amicus brief concurring with Georgia-Pacific that the Fifth Court of Appeals properly construed and applied the Texas Supreme Court's holding in *Borg-Warner Corp. v. Flores*, 232 S.W.3d 765 (Tex. 2007) with respect to substantial factor causation in an asbestos-related mesothelioma claim. TCJL's amicus letter focused on the Petitioners' claim that the Legislature in 2009 attempted to repeal lower court interpretations of Borg-Warner, and that this attempt evidenced "profound confusion" regarding the proper application of the substantial factor test laid down in that case. TCJL argued to the contrary that Petitioners' characterization of the Legislature's involvement in the issue was seriously misleading. The Court held that *Borg-Warner's* substantial causation requirement, which requires that the plaintiff offer legally sufficient proof of the approximate dose of asbestos fibers from a specific defendant, applies equally in asbestosis and mesothelioma cases.

Statute of Repose for Engineers and Architects

In *Occidental Chemical Corporation v. Jason Jenkins*, TCJL has filed an amicus brief with the Texas Supreme Court supporting Occidental Chemical's Petition for Review. The brief argues that the First District Court of Appeals erred in reversing the trial court's determination that the Respondent's claim was barred by Texas's ten-year statute of repose for engineers who design, plan, and inspect improvements to real property. If the Court of Appeals' decision is permitted to stand, it will effectively nullify the statute and subject engineers to continuing and indefinite liability for alleged design defects. In addition to having the potential to substantially raise the cost of engineering services and insurance, the decision is so far out of step with the national mainstream of tort law that businesses, especially those that must allocate capital investment to facilities located both within and outside of Texas, may decide that the potential costs of investing in improvements to real property in Texas are too great. The Court has granted review and is currently in the process of receiving briefing on the merits from the parties.

Assignment of Stowers Claims

In *Roy Seger, et al. v. Yorkshire Insurance Co., Ltd. and Ocean Marine Insurance Co., Ltd.*, TCJL has filed an amicus brief requesting the Texas Supreme Court to rehear and grant Seger's Petition for Review. The case involves an insured's assignment of its Stowers claim for an excess judgment to the plaintiff in the underlying action. TCJL is interested in the case because the Amarillo Court of Appeals applies the landmark Texas Supreme Court decision in *State Farm Fire & Cas. Co. v. Gandy*, 925 S.W.2d 696 (Tex. 1996) in a way that, under some circumstances, may deprive a business that assigns a possible Stowers claim of a fair and fully adversarial trial on the underlying claim. The Court recently reinstated the Petition for Review.

Government Standards Defense

As part of the comprehensive medical liability and tort reform package enacted in 2003, the Legislature established a rebuttable presumption that compliance with federal mandatory safety standards protects a defendant from liability for a claim alleging a risk governed by those standards. In 2011 The Dallas Court of Appeals carved out a "performance standard" exception to the government standards defense, despite the unambiguous language of the statute. TCJL filed an amicus brief in the Texas Supreme Court urging the court to reverse this decision, which in our view largely nullified the defense. In *Kia Motors Corporation and Kia Motors America, Inc. v. Ruiz*, the Texas Supreme Court decided that while the 2003 government standards defense statute does not carve out a "performance standard exception," the defense does not apply to mandatory safety standards that do not by their express terms contemplate the risk that actually occurred in the case.

Post-employment Benefits

In 2012 the Fourteenth Court of Appeals in Houston held that a major multinational corporate entity *may not* contract with a senior management employee to condition payment of post-employment, non-ERISA benefits on the employee's free decision to accept similar employment with a direct competitor that may adversely affect the employer funding those benefits. Clearly, the inability of an entity to enforce an employment contract would be detrimental to the state's business climate. TCJL's *amicus* brief urges the Texas Supreme Court to reverse this decision. The Court recently ruled that executive bonus-compensation incentive programs established under New York law are enforceable in Texas.

Personal Jurisdiction over Non-Resident Defendants

TCJL provided amicus support for a Texas company in a crucially important case involving the exercise of personal jurisdiction by a Texas court over a non-resident defendant that appropriated the company's trade secrets and proprietary information to establish a competing business in *Texas*, resulting in substantial financial loss to the company. In 2013 Texas Supreme Court determined in *Moncrief Oil International Inc. v. OAO Gazprom* that Texas courts could exercise jurisdiction over the non-resident

continued on page 12

Letters of Protection: An Emerging Litigation Issue in Texas?

As the number of states with paid or incurred laws grows, so, apparently, is the frequency of so-called "letters of protection." What are letters of protection and what impact might they have on personal injury litigation?

In 2003 Texas became one of the first states in the nation to enact a statutory limitation on the amount of medical or health care expenses that a claimant may recover in a personal injury lawsuit. Under the statute (§41.0105, Civil Practice & Remedies Code), a claimant is only entitled to recover the amount of medical or health care expenses actually paid or incurred by or on behalf of the claimant. In other words, if the defendant can show that the plaintiff's medical expenses have been discounted by, for example, Medicare, Medicaid, or private insurance contract rates, the claimant cannot recover the total amount billed, but only the "incurred" amount.

The limitation provides a more realistic measure of the claimant's real out-of-pocket costs than the old law standard of "reasonable and customary charges" for medical care. Indeed, as the Texas Supreme Court recognized in *Haywood v. Escabedo*, 357 S.W.3d 390 (Tex. 2011)(a case in which TCJL participated as amicus), health care providers may bill a "list" or "full" rate that is substantially higher than the reimbursement rate for patients covered by government or private insurance policies. This difference is precisely why the paid or incurred statute is so important to ascertaining the true value of a claim.

Presumably in an attempt to raise the settlement value of claims for medical expenses, some plaintiff's lawyers use "letters of protection" (LOP) that purport to guarantee payment to health care providers from the proceeds of a future settlement or judgment. LOPs may also be used in cases where a claimant has no insurance and no reimbursement limits or contract rates apply. Often the providers have not solicited these letters or had any contact with the plaintiff's attorney, and a few Texas appellate court opinions have found that unsolicited LOPs do not constitute enforceable contracts. The Fourteenth Court of Appeals in Houston has twice considered whether a health care provider could enforce an LOP against the plaintiff's lawyer who sent the unsolicited letter. In *Advantage Physical Therapy, Inc. v. Cruse,* 165 S.W.3d 21 (Tex.App.—Houston [14th District] 2005), for example, the Court held that in the absence of the provider's affirmative acceptance of the LOP, the letter is not an enforceable contract, even if the provider subsequently called the attorney's office seeking information about the case and decided not to sue the claimant for unpaid bills.

The Fifth Court of Appeals, however, upheld a trial court decision enforcing an LOP in *Hays & Martin, LLP v. Ubinas-Brache, M.D.* 192 S.W.3d 631 (Tex.App.—Dallas 2006). In this case, the surgeon contacted the plaintiff's lawyer seeking an LOP in exchange for the surgeon's cooperation in the lawsuit. The plaintiff's firm duly sent the LOP, constituting acceptance of the surgeon's offer. The Court further held that even though the surgeon unsuccessfully attempted to obtain reimbursement from the plaintiff's employer's workers' compensation carrier prior to learning about the plaintiff's settlement, this attempt did not indicate the surgeon's lack of assent to the LOP. Thus, the parties had a meeting of the minds that the LOP would protect the surgeon's medical bills in the event of a settlement.

It is apparent from these cases that an LOP may constitute an enforceable contract under specific conditions: there must be an offer and an acceptance, either by a clear and contemporaneous communication to accept an unsolicited LOP or by an express solicitation followed by the LOP.

LOPs have become an ethical issue in at least one state. The West Virginia Board of Medicine issued an opinion that a physician who solicits an LOP before agreeing to treat an established patient who has health insurance previously accepted by the physician may violate the physician's duty to place the patient's health care needs above the physician's financial interest. An "established patient" may include a patient whom the physician treated in an emergency and to whom the physician owes a duty of continuing care. The Board went further to say that a physician who dismisses an established patient with pre-existing insurance coverage for failing to execute an LOP. The Board thus counsels physicians to be wary of LOPs, particularly when they have an established relationship with the patient in question. ★

Texas Railroad Commission Proposes Common Carrier Pipeline Permitting Rule

In response to the Texas Supreme Court's 2011 decision in *Texas Rice Land Partners v. Denbury Green Pipeline-Texas, LLC,* the Texas Railroad Commission last month issued a proposed rule for comment creating a new permitting process for pipelines seeking common carrier status for the purpose of exercising eminent domain powers.

In *Denbury* the Supreme Court held in favor of the landowner that the regulatory process by which the Texas Railroad Commission certifies common pipeline carriers does not preclude a later constitutional challenge to a common carrier's exercise of eminent domain authority pursuant to Chapter 111, Natural Resources Code. Chapter 111 has long served as the mechanism by which the state authorized oil and gas pipelines to acquire right-of-way for Texas' energy transportation infrastructure. By recognizing a constitutional cause of action to invalidate Chapter 111 grants of eminent domain authority, the Court's decision could subject existing and proposed pipelines to costly, piecemeal litigation and turn state courts into regulatory bodies. The long-term effects on Texas' energy infrastructure and economy, driven in large part by massive investments in drilling and transportation in shale formations across the state, could be extremely detrimental to further capital investment and job creation in the state. Proposed legislation establishing a formal permitting process at the RRC did not pass in 2013.

Under the proposed rule a pipeline operator seeking classification (or renewing an existing classification) as a common carrier must file an application with the RRC stating the factual basis of the proposed classification and the pipeline's purpose. The operator must also provide supporting documentation and any other information requested by the RRC. Once the application is considered administratively complete and sufficient, within 45 days the RRC shall issue or deny the permit, or renew, amend, or cancel an existing permit. The RRC may also revoke a previously issued permit after notice and hearing, if it finds that the pipeline is not being operated in accordance with state law. The proposed rule does not contain a prior notice and hearing requirement, one of the sticking points in the negotiations between landowners and operators last session. ★

U.S. Fifth Circuit Strikes Down GPAC 60-day, $500 Expenditure Limit

The U.S. Supreme Court's decision in *Citizens United v. FEC* is wreaking havoc with campaign finance laws across the country, and Texas is no exception. C*itizens United* overturned 50 years of campaign finance law that outlawed direct corporate expenditures (so-called "independent expenditures") to advocate the election or defeat of specific candidates. Since the Court handed down the decision in 2010, numerous facial challenges to direct campaign expenditure bans and limitations have spread like wildfire. Just last year the Fifth Circuit followed *Citizens United* and struck down part of Texas' longstanding prohibition of corporate contributions to general purpose political committees (GPACs). In *Texans for Free Enterprise v. Texas Ethics Commission*, 732 F.3d 535 (5th Cir. 2013), the Fifth Circuit cleared the way for corporations to make contributions from corporate funds to GPACs that exclusively make independent expenditure and do not make contributions to individual candidates.

On August 12, the Fifth Circuit issued a decision chipping away further at the Texas campaign finance system. In *Catholic Leadership Coalition of Texas v. Reisman*, 2014 U.S.App. LEXIS 15558, the Court struck down current law requiring a GPAC to wait 60 days before exceeding $500 in contributions and expenditures *and* to collect contributions from at least 10 persons. The Court upheld the requirement that the PAC file a campaign treasurer appointment prior to making contributions or expenditures. It also, at least for the time being, upheld the ban on corporate contributions to GPACs that make both independent expenditures and candidate contributions.

The Court reasoned that the 60-day, $500 limit and the 10-contributor requirement unconstitutionally place a ceiling on speech for sixty days, even if the PAC is willing to comply with the applicable disclosure and disclaimer requirements. It likewise ruled that the $500 limit on contributions on expenditures during that period could not be justified by the State's interest in preventing *quid pro quo* corruption, since *Citizens United* ruled as a matter of law that independent expenditures cannot give rise to corruption of the appearance of corruption. Moreover, the Court opined that Texas could strengthen its current disclosure requirements and achieve the same result without overburdening First Amendment political speech. On the bright side for the State, the Court ruled that a non-profit corporation could not donate an e-mail list to a GPAC that makes both independent expenditures and candidate contributions, despite the PAC's representation that it would use the list solely for independent expenditures. Nevertheless, the Court remarked that the practice of "hybrid" PACs that make both types of expenditures "appears destined to be a coming campaign-finance law battleground."

Taken together, the two Fifth Circuit decisions invalidate four key provisions of the Texas Election Code (along with Ethics Commission opinions construing these sections):

- §253.037(a)(1), which prohibits a GPAC from knowingly authorizing a political contribution or political expenditure unless it has filed a campaign treasurer appointment at least 60 days prior to the date the contribution of expenditure is made (it must still file a campaign treasurer appointment);
- §253.031(b), which prohibits a GPAC from knowingly accepting political contributions totaling more than $500 or make or authorize political expenditures totaling more than $500 at a time when a campaign treasurer appointment is in effect;
- §253.037(a)(2), which bars a GPAC from knowingly authorizing a political contribution or political expenditure before it has received contributions from at least 10 persons; and
- §253.094(a), insofar as it prohibits a corporation or labor organization from making a political contribution to an independent-expenditure-only GPAC.

Inevitably, *Citizens United* will continue to spawn further challenges to Texas campaign finance laws. The most likely target for future litigation is the Judicial Campaign Fairness Act, which limits contributions and expenditures in judicial campaigns. In general, the Judicial Campaign Fairness Act establishes an overall expenditure limit for a Supreme Court candidate of $2 million per election (with lesser amounts for intermediate appellate and trial courts). This limitation applies to political expenditures made or authorized by the judicial candidate, but not to independent expenditures. *See* §253.168, Election Code. A general-purpose PAC may make independent expenditures on behalf of a judicial candidate, if the PAC treasurer files an affidavit with the Texas Ethics Commission stating that "the committee has not directly or indirectly communicated with the candidate's campaign regarding a "strategic matter, including polling data, advertising, or voter demographics, in connection with the candidate's campaign." *See* §253.160(c), Election Code.

There is another statutory provision, however, that requires a general-purpose political committee to give notice at least 60 days prior to the election of its intention to make a direct campaign expenditures in a judicial race that in the aggregate exceed $25,000. *See* §253.163(b), Election Code. Violation of this provision carries a civil penalty of up to three times the amount of political expenditures incurred. §253.163(g), Election Code. Though couched as a simple notice requirement, the statute effectively bars a PAC from deciding to make independent expenditures after the 60-day deadline has passed.

While the U.S. Supeme Court's ruling in *Citizens United* seems to leave *Buckley v. Valeo* intact with respect to pre-election disclosure and registration requirements, a pre-election notice of future intent to make independent expenditures that operates to bar such expenditures on a date certain may not pass constitutional muster. Given the Fifth Circuit's analysis of the 60-day waiting period prescribed by §253.037(a)(1), it highly is likely that the Court would apply strict scrutiny to §253.163(b) provision as well, since it clearly places a significant burden—indeed a prohibition—on a PAC's political speech in advance of an election. The State would then have to show a compelling inter-

continued on page 15

SCOT Hears Arguments in Deepwater Horizon Case

On September 15 the Texas Supreme Court heard oral arguments in *In re Deepwater Horizon* (No. 13-0670). The case, which arose out of the explosion and subsequent oil spill involving the BP Deepwater Horizon offshore oil well in the Gulf of Mexico, is before the Court on certified question from the U.S. Fifth Circuit Court of Appeals. At issue is the construction of Texas law with respect to the scope of BP's insurance coverage under an additional insured provision in BP's contract with Transocean Holdings, Inc., which owned the well. Transocean contracted with both primary liability and excess liability insurers to cover its insurance requirements under the BP contract. The combined coverage under these policies approached $750 million.

When the well exploded, BP notified the carriers of its losses, including pollution-related losses. The carriers filed a declaratory judgment action against BP seeking a declaration that the insurers have no additional insured obligation with respect to the pollution-related losses. Applying Texas and Fifth Circuit case law, the federal district court ruled for the insurers on the basis that BP's drilling contract with Transocean made Transocean liable only for spills occurring on or above the surface of the water, thus excluding damage from an underwater spill. The Fifth Circuit initially reversed, but subsequently withdrew its opinion and certified the following questions to the Texas Supreme Court:

- Whether Transocean's umbrella insurance policy, to which BP was an additional insured, or the indemnity clauses in the drilling contract determine govern the scope of BP's losses;
- Whether Texas law recognizes the "sophisticated insured exception" to the general rule that an ambiguous insurance policy should be construed in favor of the insured, even if the insurer's interpretation is more "reasonable."

At the heart of the case is the applicability of the Texas Supreme Court's decision in *Evanston Ins. Co. v. ATOFINA Petrochems, Inc.*, 256 S.W.3d 660 (Tex. 2008). In this case, ATOFINA contracted with a service company to perform maintenance on its oil refinery. The contract required the contractor to name ATOFINA as an additional insured under its umbrella liability policy. When ATOFINA and the service company were sued for wrongful death following an accident at the refinery, the insurer (Evanston) refused to defend ATOFINA, claiming that the additional insured provision did not extend coverage because ATOFINA had excluded coverage for its sole negligence from the contract's indemnity clause. The Court found that the additional insured provision operated as a separate and independent agreement from the indemnity clause; ATOFINA became a direct insured by virtue the additional insured provision at the same time it agreed contractually with the service company not to seek indemnification for its own sole negligence.

BP argues that ATOFINA applies in the same way to its additional insured status under its contract with Transocean. Transocean and the insurers, on the other hand, argue that ATOFINA does not apply because, under the specific circumstances of this case, the additional insured provision is not separate and independent from the indemnity clause in the drilling contract. The concomitant issue of how the Court should construe the additional insured provision involves the general rule that the court will interpret an insurance contract in favor of the insured, if the insured's interpretation is "reasonable." *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Hudson Energy Co.*, 811 S.W.2d 552 (Tex. 1991). The carriers want the Court to recognize a "sophisticated insured exception" in this case because BP (and Transocean) are large multinational entities with significant bargaining power and sophistication in contracting. BP counters that the insurers drafted the umbrella policy and are now seeking to escape the consequences of their own contract.

The case has received attention from amici on both sides. The National Association of Manufacturers urges the Court to observe the "four corners" rule of contract construction and find that the umbrella policy covers BP's losses. The brief also asks the Court not to recognize a "sophisticated insured" exception. On the other side, briefs filed on behalf of the International Association of Drilling Contractors, Aviation Insurance Association, Lloyd's Market Association, International Underwriting Association, Property Casualty Insurers Association of America, and American Institute of Marine Underwriters, and other insurance organizations take the opposite position. ★

TCJL *Amicus* Report

continued from page 9

defendant under the facts of the case and remanded the case to the trial court for further proceedings. The Court denied Gazprom's motion for rehearing.

Negligent Hiring/Punitive Damages

In an alarming court of appeals decision, the Dallas Court of Appeals issued a decision that erodes the distinction between negligence and gross negligence, violating this the Texas Supreme Court's landmark decision in *Transportation Insurance Company v. Moriel*, 879 S.W.2d 10 (Tex. 1994) and subsequent decisions. If affirmed, the court of appeals' decision will subject Texas employers of all types and sizes to punitive damages for mere negligent hiring and have a significant chilling effect on employment opportunities for Texans. TCJL provided amicus support for the Petitioner in this case. In *U-Haul International Inc. v. Waldrip*, the Court ultimately reversed a $30 million punitive damages award against U-Haul.

Contractual Torts/Punitive Damages

The San Antonio Court of Appeals allowed a plaintiff to recover punitive damages in a breach of contract claim, potentially converting every contract dispute into a tort claim with liability for punitive damages. TCJL filed an amicus brief on behalf of the defendant Host Marriott urging the Texas Supreme Court to accept review. The Court initially declined to hear the case, *HMC Hotel Properties II Limited Partnership and Host Hotels & Resorts, L.P., f/k/a Host Marriott, L.P. v. Keystone-Texas Property Holding*. TCJL filed a second amicus supporting HMC's motion for rehearing, which the Court granted. In June, the Court issued a decision reversing the San Antonio Court of Appeals and rendering judgment for Host Marriott. Keystone-Texas' motion for rehearing is currently pending. ★

Divided Texas Supreme Court Finds Waiver of Sovereign Immunity in Construction Contract; No-Damages-for-Delay Provision Unenforceable

Unlike its federal counterpart, in recent times the Texas Supreme Court has not seen very many split decisions. The Court's long-awaited ruling in Zachry Construction Corporation v. Port of Houston Authority of Harris County, Texas (No. 12-0772) is a notable exception.

The case arose out of a construction contract between Zachry and the Port to build a wharf on the Bayport Ship Channel at an approximate cost of $62.5 million. Under the contract, Zachry, as independent contractor, assumed sole authority to determine the method and manner of the work. After the initial construction work had begun, the Port and Zachry agreed to a change order adding a new section to the wharf at an additional cost of nearly $13 million. Shortly after agreeing to the change order, the Port ordered Zachry to revise and resubmit its plans for the new construction, to which Zachry objected as contrary to its responsibility as an independent contractor. In the event, although Zachry completed the first phase of construction within the contract deadlines (allowing a Chinese ship to dock successfully), the Port's contravention of the change order caused a two-and-one-half-year delay in completion of the project. The Port withheld $2.36 million in liquidated damages as a result of the delay. Prior to completion of the project, Zachry sued the Port, claiming $30 million in damages from delays caused by the Port. The Port argued that the contract's "no damages for delay cause" precluded Zachry's claim, even if the Port's misconduct caused the delay. Zachry likewise sought to recover the $2.36 million in withheld liquidated damages. The Port argued that Zachry's claims were precluded by the releases it executed in order to obtain the periodic payments from which the liquidated damages were withheld.

The trial court ruled that the contract's no damages for delay provision could not be enforced if the Port's intentional misconduct caused the delay in the first place. It also found that the release did not unambiguously cover Zachry's claim for the liquidated damages withheld. The case thus proceeded to the jury, which found that the Port breached its contract with Zachry when it interfered with Zachry's performance of the change order. It also found that the Port's interference was active, arbitrary, and in bad faith. Likewise, the jury found that Zachry did not release its claim to recover the withheld liquidated damages. It awarded $18.6 million in damages for the breach, as well as the unreleased $2.36 million (with a $970,000 offset for other defective work). The trial court ordered judgment for Zachry on the verdict. Both parties appealed. The 14th Court of Appeals in Houston reversed the judgment, finding that the no damages for delay provision barred Zachry's recover of delay damages, that Zachry released its claim for the withheld liquidated damages, and that the Port was entitled to $970,000 for defective work. The Court of Appeals also awarded nearly $10.7 million in attorney's fees to the Port. Zachry sought and the Texas Supreme Court granted review.

In an opinion by Chief Justice Hecht, joined by Justices Green, Guzman, Devine, and Brown, the Supreme Court accepted the jury's determination that the Port's intentional misconduct caused the delay in the first place, thus invalidating the "no damages for delay" clause in the contract. The Court cited the substantial majority of jurisdictions adhering to the common law rule that such clauses do not shield an owner from liability for deliberate or wrongful interference with the contractor's work. The Court then determined that the Local Government Contract Claims Act (Tex. Loc. Gov't Code §§271.151-.160) does not shield a local governmental entity from liability for such interference.

The central issue in the case (and the point of disagreement between the majority and the dissent) involves whether a local governmental entity that enters into a construction contract waives its sovereign immunity from suit for any recovery for which the contract does not expressly provide. The Supreme Court found fault with the 14th Court of Appeals for failing to reach this question (the CA stopped with the enforcement of the no damages for delay clause), since whether a governmental entity can lawfully invoke sovereign immunity is a jurisdictional question that precedes the breach of contract issue.

To address the question, Chief Justice Hecht closely analyzed the two operative statutory provisions: (1) §271.152, providing that a local governmental entity that enters into a contract for goods or services "waives sovereign immunity for suit for the purposes of adjudicating a claim for breach of the contract, subject to statutory terms and conditions; and (2) §271.153, which limits recovery on a breach of contract claim for which the entity has waived immunity once the entity's liability has been established. Generally, §271.153 limits the amount that a contractor may recover against a local governmental entity to: (1) the balance due and owed by the entity under the contract, including damages as compensation for increased cost directly caused by owner-caused delays or acceleration; (2) the amount owed for change orders; (3) reasonable and necessary attorney's fees; and (4) interest.

Justice Hecht first determined that the Local Government Contract Claims Act does not waive immunity from suit on a claim for damages not recoverable under §271.153. In other words, the statute only waives immunity for the four enumerated categories of damages specifically set out in the statute. In so ruling, the Court disapproved of ten court of appeals decisions from across the state to the extent they are contrary to Zachry. The second part of the majority opinion, Justice Hecht held that the contractor may recover "the balance due and owed by the entity under the contract," even if the contract does not expressly provide for payment. "The word 'due' simply means 'owing and payable' and 'owing means 'unpaid'," wrote Justice Hecht. "A 'balance due and owed . . . under the contract' is simply the amount of damages for breach of contract payable and unpaid. Direct damages for breach—'the necessary and usual result of the defendant's wrongful act'—certainly qualify" (19). The majority also found that the amount of the "balance due and owed" does not have to be ascertainable from the contract because the

continued on page 15

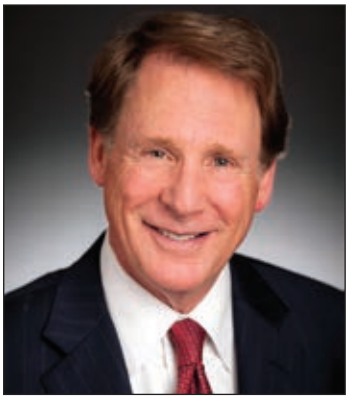
Senator Duncan Named Chancellor of the Texas Tech University System

The Board of Regents of the Texas Tech University System named Senator Robert L. Duncan (R-Lubbock) as the fourth chancellor of the Texas Tech University System on July 7, 2014. Following his appointment, Senator Duncan retired from the Texas Senate, where he served with great distinction for 18 years. Prior to his election to the Senate, Senator Duncan served two terms in the Texas House of Representatives.

During his long tenure in the Legislature, Senator Duncan provided exceptional and principled leadership to the people of his district and to the state as a whole. Because of his tireless work ethic, integrity and honesty, and the high esteem in which his colleagues held him, virtually no major legislation has been enacted in the more than two decades that has not benefited from Senator Duncan's intelligence, judgment, and good sense. As a member of the legislative staff of Senator John Montford (D-Lubbock), Senator Duncan provided invaluable counsel and advice in the passage of the 1989 Texas Workers' Compensation Reform Act. As a member of the House, Senator Duncan authored the 1995 venue reform bill and played a central role in negotiating the entire package of civil justice reforms that session. As Chair of the Senate State Affairs Committee for many years, Senator Duncan left his mark on dozens of pieces of major legislation, including the 2003 medical liability and tort reform act and the 2005 asbestos litigation reforms. Senator Duncan has always been the leading champion of judicial selection reform, twice passing constitutional amendments through the Senate calling for an election-retention system. As a friend to the cause of a fair and balanced judicial system, Senator Duncan has no equal, and we will sorely miss his wisdom and leadership in the Texas Senate.

But the Legislature's loss — and ours — is Texas higher education's gain. Senator Duncan's official biography says it all:

"As chancellor, Duncan is the chief executive officer of the Texas Tech University System, which includes four component institutions — Texas Tech University, Texas Tech University Health Sciences Center, Angelo State University and Texas Tech University Health Sciences Center at El Paso. He is focused on providing each university with the resources needed to ensure the academic achievement of all students enrolled in the system institutions. As part of his leadership, the chancellor also works in both Austin and Washington, D.C. to increase funding for all system institutions.



Serving in the Texas Legislature for more than two decades was a tremendous honor. With the help of many leaders and organizations like the Texas Civil Justice League, we were able to accomplish great things that bettered our state. In my new role as Chancellor of the Texas Tech University System, I look forward to continued collaboration in Austin that will help advance our four universities and improve higher education in Texas.

Chancellor Robert Duncan, Texas Tech University System

Before becoming chancellor, Duncan served in the Texas Legislature for more than two decades. He was elected to District 84 in the Texas House of Representatives in 1992. In 1996, he won a special election to the Texas Senate, where he served until resigning to become chancellor.

While representing District 28 as State Senator, Duncan crafted major legislation impacting Texans and served on three of the Senate's most powerful committees—Finance, State Affairs and Budget Conference. He served as president pro tempore of the Texas Senate during the 81st Legislative Session and served as a member of the Senate Committee on Higher Education, the Education Committee and the Natural Resources Committee. He was widely recognized as a leader in the Texas Legislature. Texas Monthly magazine named Duncan to its 'Ten Best List' more times than any other member of the legislature.

Duncan also was a law partner at Crenshaw, Dupree and Milam in Lubbock for more than 25 years. He advised clients in insurance law and commercial litigation, among many others areas of his legal practice, and remains 'of counsel' for the law firm.

Duncan is a lifelong West Texan. He was raised in Vernon, Texas. He is the only son of five children born to Frank L. Duncan and Robena Formby Duncan. Duncan and his family have a rich heritage with Texas Tech University. His uncle, Marshall Formby, and cousin, Clint Formby, both served on the Texas Tech Board of Regents.

Duncan received his bachelor's degree in agricultural economics from Texas Tech University in 1976. While completing his undergraduate degree, he served as the student body president. Duncan received his doctorate of jurisprudence from the Texas Tech University School of Law in 1981.

Duncan has two children. His daughter, Lindsey Pike, is a public school teacher and counselor, and is married to Wes Pike. His son, Matthew Duncan, is a food distribution sales representative. Chancellor Duncan is married to Terri Duncan. Mrs. Duncan also has two children, Justin Patterson, an IT specialist, and Clayton Patterson, an auto-financing assistant. All the children are Texas Tech University graduates."

All of Senator Duncan's friends here at TCJL wish him God's speed in the important work he has before him. Texas Tech could not have put its future in better hands. ★

U.S. Fifth Circuit Strikes Down GPAC 60-day, $500 Expenditure Limit

continued from page 11

est to limit such speech, and that the 60-day notice provision is narrowly tailored to achieve that result. Presumably, the State would assert a compelling interest in preventing corruption or the appearance of corruption as the result of unrestrained, "last minute" PAC expenditures in the 60 days prior to an election.

The problem with the anti-corruption argument is three-fold:

1. The provision on its face allows some PACs to make direct campaign expenditures in a judicial race, while barring others from doing so. The only difference between them is the date on which they form an "intent" to make independent expenditures. As previously noted, the Court stated in *Citizens United* that the "First Amendment bars attempts to disfavor certain subjects or viewpoints, as well as restrictions distinguishing among different speakers, allowing speech by some but not by others." The 60-day notice provision arguably has this result.
2. *Citizens United* makes it clear that *Buckley's* anti-corruption rationale only applies to political contributions, not to independent expenditures. Whether an independent expenditure made 61 days or 59 days before an election does not change the fact that the "absence of coordination" inherent to independent expenditures vitiates the appearance of corruption associated with direct contributions in exactly the same way.
3. The State might argue that the 60-day notice requirement is necessary to prevent a PAC from organizing and making expenditures near the date of the election without disclosing them in a timely fashion, thus effectively concealing such expenditures from public view until the election is over. This argument is in effect another version of the anti-corruption rationale and would likely fail since the notice requirement effectively bars certain independent expenditures.

In view of the growing number of Election Code provisions either already invalidated or in imminent danger of invalidation pursuant to *Citizens United*, it may be time for the Legislature to revise Chapter 253 to eliminate unconstitutional (or soon likely to be unconstitutional) provisions and strengthen disclosure and disclaimer requirements. *Citizens United* and subsequent cases demonstrate that federal courts will apply a lower level of scrutiny to campaign finance that promote transparency as opposed to placing monetary limits on political speech. Perhaps it is time for the Legislature to consider updating disclosure statutes to take advantage of technological advances that allow contemporaneous reporting, especially in the period right before an election. On the other hand, any Texas statutes that purport to limit expenditures, as they do in judicial races, do not make much sense in an era of unlimited corporate independent expenditures. ★

Divided Texas Supreme Court Finds Waiver of Sovereign Immunity in Construction Contract; No-Damages-for-Delay Provision Unenforceable

continued from page 13

statute already allows recovery of compensation for owner-caused delays, which cannot be quantified in advance.

Justice Boyd's dissent, joined by Justices Johnson, Willett, and Lehrmann, vehemently disagreed with the majority that contract damages must first be expressly provided for or contemplated in the contract before they can be considered "due and owed." The majority responded that nothing in §271.153 imposes such a limitation; in fact, the statute specifically excludes the recovery of consequential damages, even if they are specifically provided for in the statute.

In the third part of the opinion, Justice Hecht considered whether the no-damages-for-delay provision of the contract barred Zachry's claim. The Court of Appeals held that it did, despite common law exceptions to the enforcement of such provisions in the event of active interference or fraud on the part of the entity (which, as the Court points out, the jury found in this case). The Court, however, concurred with the substantial majority of jurisdictions that, on public policy grounds, decline to enforce no-damages-for-delay provisions if the governmental entity deliberately and wrongfully interferes with the contractor's performance. "Generally, a contractual provision 'exempting a party from tort liability for harm caused intentionally or recklessly is unenforceable on grounds of public policy," wrote Justice Hecht. "We think the same may be said of contractual liability. To conclude otherwise would incentivize wrongful conduct and damage contractual relations" (26). The Court further noted that freedom of contract does not extend to authorizing conduct that violates law or public policy.

Finally, the Court considered whether Zachry had released its claims for liquidated damages withheld by the Port. Justice Hecht ruled that a release of claims for work completed, as a matter of law, does not release claims for withheld liquidated damages for work not completed. The Court reversed the Court of Appeals' judgment awarding attorney's fees to the Port, but upheld the jury's finding that Zachry breached its contract with respect to defective wharf fenders. The Court remanded the case to the trial court for further consideration in accordance with its opinion. ★

Texas Civil Justice League
400 West 15th Street, Suite 1400
Ausitn, 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

9-2014