

Supreme Court Victory

Tort reformers scored a major victory in November with the election of five of six conservative candidates to the state Supreme Court.

Business and professional groups had been exasperated with a state Supreme Court that in the last decade had continually expanded liability. The League and many of its law firm and association members participated in the effort to help educate their members and the public on the importance of voting for responsible candidates with a high degree of personal integrity.

Business-supported newly elected members of the court are:

- Tom Phillips (Rep.), Chief Justice
- Nathan Hecht (Rep.), Place Two
- Raul Gonzalez (Dem.), Place Three
- Jack Hightower (Dem.), Place Four
- Eugene Cook (Rep.), Place Five

Board Targets Legislature

In October the Board of Directors approved a far-reaching legislative program for tort reform. "We can't afford to rest on our laurels," said J. P. Word, TCJL President. "We made significant progress with our tort reforms of 1987, but we can't quit now."

At its meeting, held in conjunction with the annual meeting of TCJL members, the board heard from Jack Gullahorn, Robert Spellings and Nub Donaldson, who will lead the 1989 legislative effort. TCJL will field a strong team to help pass the four-point program.

TCJL Legislative Program

- Medical liability reforms
- Unfinished tort reforms from 1987 efforts
- Reforms to the Deceptive Trade Practices Act
- Products liability reforms

71st Legislature Begins

Four new senators and twenty-two new House members were sworn in when the Legislature convened in early January. Republicans gained two seats in the Senate for a total of 8, against 23 Democrats; while Republicans in the House netted a single seat, making it 57 vs. 93 Democrats. Although the House increase was modest, the day is approaching when the two parties will organize into formal partisan groups, which has never occurred in Texas.

Major legislative issues to be considered this year are: revenue and budget; tort reform (including reforms to the Deceptive Trade Practices Act, products liability, and medical liability); workers compensation reform; and changes to the way Texas elects its judiciary.

The Right STEP

Tort reform got a big boost in Texas when the Governor's special commission on economic growth recommended that continued reforms be made "to provide predictability and cost effectiveness" to the state's civil justice system.

The Strategic Economic Policy Commission (STEP) said that continued changes must be brought about to make Texas' tort laws as fair to business as those of any other state while providing reasonable compensation for personal injury. The commission warned

that we need progress in liability and tort reform to enhance the state's business climate.

"Jobs, growth, and opportunities. These are my economic goals for Texas," said Gov. Bill Clements, who chaired the commission. "Clearly, that is the aim of our report."

Targeted among STEP's highest strategic objectives, items that demand immediate action, tort reform is expected to be one of the legislative session's most hard-fought issues.

As part of its tort reform recommendations, the commission found that:

- Reforms must be made to the Deceptive Trade Practices Act to balance the interests of consumers with the concerns of business and industry for predictability and protection from unnecessary risk.
- The crisis in medical liability costs must be evaluated to help alleviate its growing burden on rural hospitals and physicians.

The economic development commission cautioned that tort reform is a necessary part of the long-term process of fostering economic development at a time when the state needs it most.

TCJL Welcomes NFIB

In December, the Texas chapter of the National Federation of Independent Business became the newest League member. NFIB represents some 42,000 independent businesses in Texas.

"We're very pleased to welcome NFIB and its members," said TCJL Executive Vice President Ralph Wayne. "They'll be joining over 100 other Texas trade and professional association members of the League who've made tort reform a major part of their legislative goals."

Well-known in legislative circles for its active network of members, the NFIB is expected to greatly expand the League's grassroots effort on tort reform issues.

Membership Status Report

With over 1,700 total members, TCJL membership increased by 81% in 1988.

Issues Update

Medical Liability Reform. In the medical liability reform area, the Texas Medical Association is preparing a package of bills for filing. Included in the package are bills setting the requirements of experts testifying in medical malpractice cases, defining the standard of care and setting up the burden of proof as "clear and convincing" in a medical malpractice case, and, establishing a Good Samaritan Rule for health care providers providing services in emergency rooms.

The League-supported package also included measures relating to periodic payment of future damages, disclosure and offset of collateral sources of payment and a cap on damages.

There will also be legislation relating to relief for obstetrics and other high risk areas in the practice of medicine. The bills are expected to be filed in late January.

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TCJL CIVIL JUSTICE ADVOCATE

DTPA. Although the Joint Committee on Deceptive Trade Practices adjourned with no vote, it was the conclusion of the chairman, Sen. John Montford, that there is need for reform. A summary of committee activities by the chairman indicates that 27 of 34 witnesses who appeared strongly advocated the need for reform. Among Montford's recommendations on DTPA are:

- Place a limit of \$100,000 on the size of claims for actual damages under DTPA
- Limit the total amount of damages that can be recovered to \$500,000
- Lengthen certain notice requirements under DTPA

The League is looking for Senator Montford to introduce legislation in January calling for reforms to the DTPA.

Products Liability. A recent TCJL-commissioned study of the liability law in Texas is particularly applicable to the League's fight for products liability reform:

- 3,200 Texas manufacturers, employing 340,000 Texas workers, claim to be considering stoppage of all manufacturing operations in Texas and/or moving to another state.
- 30,000 Texas workers have lost their jobs due to layoffs in which liability costs were an important consideration.
- 3,000 Texas manufacturers have decided not to introduce a new product because of liability considerations, while 1,500 have discontinued an existing product for the same reason.

The survey was commissioned to get the facts needed to convince the legislature that product liability reform is needed so that strong economic development can take place.

After several months of study, TCJL's Products Liability Task Force is currently drafting bills to make changes in Texas products liability law. Look for those bills to be introduced shortly.

Workers' Compensation. In December the interim legislative committee studying workers' compensation issued its report on changes needed to the WC system to make it more affordable for businesses and still take care of the injured worker. Look for separate legislation to be introduced by the co-chairmen of the committee, Senator Bob Glasgow and Representative Richard Smith.

Product Liability Limits Medical Innovation

In a recently released study, the American Medical Association found that innovative products are not being developed or are being withheld from the market because of liability concerns or the inability to obtain adequate or affordable insurance.

Certain older medical devices have also been removed from the market, not because of sound scientific evidence indicating lack of safety or efficiency, but because product liability suits have exposed manufacturers to unacceptable financial risks.

In its report, "The Impact of Product Liability on the Development of New Medical Technologies," the AMA assesses the impact of product liability on the availability of vaccines, contraceptives and other medical devices. In the area of vaccines, for example, the study found that the number of lawsuits filed against the manufacturers of the DPT vaccine has climbed from fewer than 100 during the three-year period 1982-84 to 110 in 1986 alone.

The AMA recommends continuing efforts at the state and federal levels to reform product liability laws.

School Science Labs Soon a Thing of the Past?

Liability concerns are partly to blame for a decline in school science labs. The National Science Foundation recently reported that between 1976 and 1986 the proportion of science classes that use "hands-on" activities had dropped between 15 percent and 27 percent, depending on the grade.

The study's findings are especially critical at a time when science and education groups have viewed with alarm the poor performance of American students on standardized science tests, especially compared with students in other countries. Instead of devoting more time to science labs to help overcome this deficiency, science classes are being revised to expose students to less lab time.

"One of the primary culprits in this decline is the fear of lawsuits and high awards that could result from a real or perceived problem in the classroom," said Blair Childs of the American Tort Reform Association in a letter to the Washington Post.

In some schools liability fears are responsible for the dropping of chemistry and physics experiments that use Bunsen burners or a hot plate or which use certain chemicals, now deemed too risky. Other contributions to the science lab decline may be lack of experienced science teachers, unfounded fears of AIDS transmittal through some experiments, and pressure from animal rights activists.