

THE ORIGINAL TEXAS TORT REFORM

# ADVOCATE

TEXAS CIVIL JUSTICE LEAGUE

FEBRUARY 2003

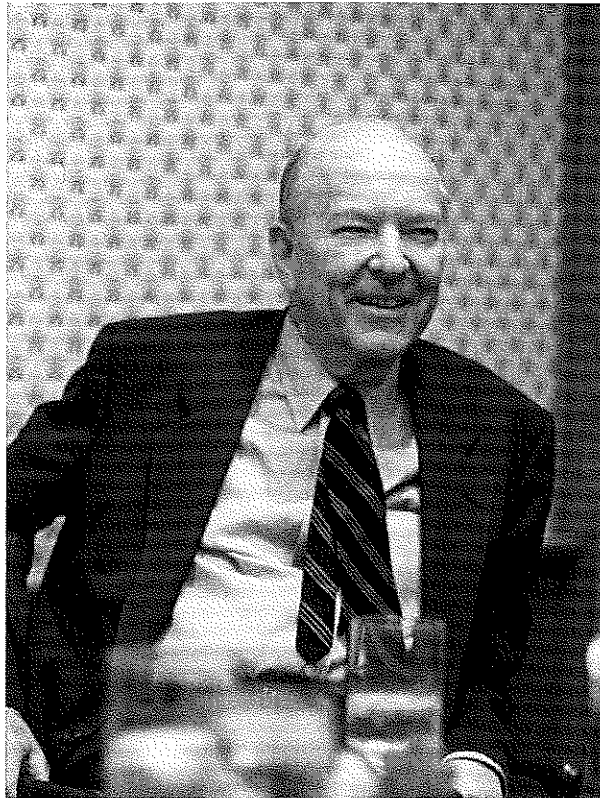
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## IN MEMORIAM GEORGE E. CHRISTIAN 1927-2002



George Christian participates in a 1996 interview with Capitol Press Corps legends at the Austin Club.

Photographs by Bill Albrecht



**George Christian “reminds us that we are participants in a noble calling.”**

Paul Burka, Texas Monthly

*A Dallas Morning News* editorial summed it up, “George Christian cared.” The adviser to governors and presidents, passed away November 27, 2002 after a year-long battle with lung cancer. George Christian represented everything good about governing. He served many years as a consultant and treasurer for the Texas Civil Justice League, and received the Millennium Award for his contributions to civil justice reform at the 2001 TCJL Annual Meeting.

### THIS ISSUE:

- 1 TCJL Salutes the 2003 Texas Leadership
- 2 Texas Asbestos Consumers Coalition
- 2 Citizens Against Lawsuit Abuse
- 3 TCJL Pushes Comprehensive Reform Package
- 4 Frivolous Lawsuits Target Restaurants and Retailers
- 4 Chairman’s Column
- 5 2002 Annual Meeting Gets Wild

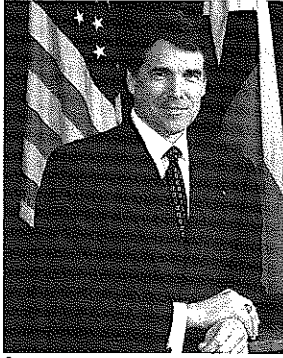
George Christian was born in Austin, Texas. After graduating from Austin High School, he enlisted in the United States Marine Corps during World War II and served in the Pacific Theater as a rifleman. Upon his return home, Christian received his journalism degree from the University of Texas and began his career as a sports editor and wire service reporter. Before becoming President Lyndon B. Johnson’s White House press secretary in 1966, Christian was chief of staff for Governor Price Daniel and press secretary for Governor John B. Connally. In 1969 he returned to Austin with his family to build a government relations and public affairs firm. Christian and his wife, the former Jo Annè Martin, have six children, all graduates of the University of Texas at Austin, and eleven grandchildren.

In addition to his professional activities, Christian served as the vice chairman of the Lyndon Baines Johnson Foundation and chairman of the Texas

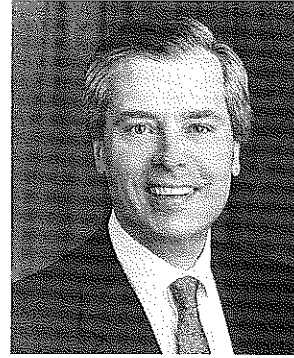
Historical Commission. He was a member of numerous civic and philanthropic boards. Christian was honored as a Distinguished Alumnus of the University of Texas and Outstanding Alumnus of the UT College of Communications. A centennial professorship has been endowed in his name at the university. Christian was also recognized with the Texas Award for Historical Preservation, the Ruth Lester Award for Lifetime Achievement in Historical Preservation, the Harvey Pennick Award for Excellence in the Game of Life, and was named Texan of the Year by the Texas Legislative Conference.

Christian told a reporter last year, “If you get credit for your friends, I’ll be in good shape.” The directors, members, and staff of the Texas Civil Justice League feel the same way. If we get credit for George’s friendship, we’ll be in good shape.

## TCJL Salutes the 2003 Texas Leadership



Governor  
Rick Perry



Lieutenant Governor  
David Dewhurst



House Speaker  
Tom Craddick

## Texas Asbestos Consumers Coalition

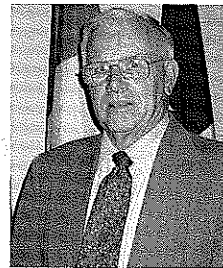
For the past three months, the TACC Legal Review Committee has been working on a legislative approach to resolving the most egregious abuse of asbestos litigation: mass numbers of unimpaired claims (up to 90 percent of all asbestos claims) against asbestos consumers. In other words, people who are not sick are filing hundreds of thousands of claims against thousands of businesses that had nothing to do with manufacturing the product. The end result of this legal extortion is billions of dollars in payments to plaintiff's lawyers and their unimpaired clients, at the expense of the truly injured and Texas employers, as well as their employees, retirees, and investors.

**The core of the TACC's legislative agenda comprises three main elements:**

- the creation of an inactive docket for all asbestos claims, pending and future;
- a pure comparative liability system for asbestos lawsuits, which permits the jury to allocate fault to the bankrupt asbestos manufacturers and gives defendants full credit for amounts paid by settling defendants; and
- consolidated or coordinated pretrial proceedings for asbestos lawsuits in a single court within the judicial administrative district.

Other ideas on the table for discussion include punitive damages reform and mandatory dismissal of nonresident asbestos claims where the alleged exposure took place in another state. As the legislative session approaches, TACC will determine which proposals go forward in the form of legislation.

In conjunction with the activities of the Legal Review Committee, TACC has also been conducting a research project to determine the scope and economic impact of asbestos litigation. This study should be completed in time for the legislative session.



## Citizens Against Lawsuit Abuse Champion Reform

Bill Summers,  
Valley CALA founder  
and president

In November 1990, the Rio Grande Valley Partnership, a regional chamber of commerce, launched a citizen-driven coalition dedicated to fighting the blatant lawsuit abuses sweeping across the region. In the twelve years since the launch of the first Citizens Against Lawsuit Abuse (CALA) group, the movement has spread throughout Texas and across the country—and effectively changed the way we think and talk about abusive litigation.

Citizens Against Lawsuit Abuse groups are non-profit, non-partisan grassroots coalitions dedicated to informing the public about the cost and consequences of the abuse of the civil justice system. CALA serves as a legal watchdog, working to help ensure continued balance, fairness and sensibility in the system while challenging those who abuse the process.

CALA tackles issues that affect our daily lives. From unmasking the culprits behind the mold "crisis" and healthcare lawsuit abuse to speaking about the effects of many of today's class action lawsuits and the importance of Texas Supreme Court elections, CALA is making an impact in Texas.

More than 25,000 Texans now support CALA chapters in Central Texas, the Rio Grande Valley, East Texas, San Antonio, Houston, Corpus Christi and Dallas-Fort Worth. Supporters include small business people, homemakers, doctors, retirees, consumers and taxpayers — Texans from all walks of life who share a common concern about lawsuit abuse and its impact on our lives and our livelihoods.

"At Citizens Against Lawsuit Abuse, we're passionate about what we do," says Bill Summers, a founder of the movement who serves as president of the Valley CALA. "Plus, no one fights lawsuit abuse like we do."

For more information about a CALA chapter near you, please visit [www.tala.com](http://www.tala.com).

# TCJL Pushes Comprehensive Reform Package

The 78th Legislature convenes on January 14, 2003 with tort and civil justice reforms as top priorities for Governor Rick Perry, Lieutenant Governor David Dewhurst, and House Speaker Tom Craddick. TCJL will offer an extensive program of reforms aimed at eliminating loopholes in the current system and addressing the outrageous abuse of class action and asbestos litigation. TCJL will also ask the Legislature to consider redistricting the courts of appeals to accurately reflect the state's growth, encourage jury service and improve the quality of juries, and solve the continuing problem of forum shopping for a plaintiff-friendly judge. Finally, TCJL will seek a more effective method of disciplining lawyers who file frivolous lawsuits and better enforcement of laws against barratry and improper lawyer advertising.

TCJL's legislative agenda may be summarized briefly as follows:

## Statute of Limitations and Venue

- Protect existing statute of limitations from being weakened. Prevent a flood of lawsuits based on stale claims.
- Prevent special interest forum shopping on oil and gas lawsuits.

## Appeals Bonds

- Provide reasonable limits on appeals bonds that are required by judgment debtors. The debtor should not be bankrupted in order to put up a bond during the appeal process.

## Class Action Reform

- Allow the Supreme Court to hear interlocutory appeals of class certification questions.
- Require class representative to use existing mandatory, non-judicial remedy prescribed by the legislature before filing a class action.
- Authorize the Supreme Court to adopt rules for designating classes for settlement-only actions.
- Bar forum shopping in class action lawsuits.

## Settlement Credit

- Restore the percentage credit for settlements and eliminate the sliding scale credit.

## Multiple Awards of Punitive Damages

- Establish legislative standards for the rule of law that excessive, repeated punishment for the same conduct is unconstitutional.

## Forum non conveniens

- Remove burdensome procedural barriers that prevent judges from transferring lawsuits that are more properly tried in another state.

## Products Liability

- Set clear standards for product warnings.
- Create a government standards defense for compliance with government-mandated warnings.
- Protect innocent retailers from liability for sales of pre-packaged products.
- Codify the learned intermediary doctrine.
- Bar evidence of subsequent remedial measures in order to encourage product improvements.

- Expand the existing statute of repose to all manufactured products.
- Provide liability protection for manufacturers of life-saving vaccines and medical products.

## Prejudgment Interest

- Allow prejudgment interest rate to follow market rates.
- Bar prejudgment interest on future damages.
- Require prejudgment interest to accrue from the time the lawsuit is filed.

## Limits on Contingency Fees for Cities and Counties

- Limit the ability of governmental units to enter into contingency fee contracts for lawsuits against product manufacturers, similar to the limits on state contingency fee contracts.

## Proportional Liability

- Abolish joint liability. Each defendant should be liable for his proportionate share of damages, not for damages caused by others.

## Offer of Settlement

- Create a strong offer of settlement rule that encourages parties to evaluate carefully the merits of their claims and defenses before asserting them and ends the subsidy for litigating marginal cases.

## Admissibility of Seat Belt Use

- Allow the jury to hear evidence of non-use of a seat belt.

## Venue for Multiple Defendants

- Close the current venue loophole that allows plaintiffs in multiple defendant cases to shop for the most favorable forum.

## Legal Ethics

- Strengthen laws disciplining attorneys for barratry and other misconduct and severely restrict attorney advertising.

## Court of Appeals Redistricting

- Fairly redistrict the fourteen court of appeals districts to accurately reflect growth in the state's population and the distribution of caseload throughout the state.

## Visiting Judges on Technical Cases

- Reduce the impact of forum shopping by requiring the Supreme Court to appoint visiting judges to hear complex litigation.

## Medical Liability

- Place a hard cap on non-economic damages of \$250,000.
- Protect physicians who provide charity care from liability lawsuits.
- Require plaintiffs' lawyers who file frivolous medical liability claims to reimburse the health care provider for defense costs.

## Mold

- Provide fair and reasonable homeowner coverage.
- Prevent excessive damage awards in mold-related lawsuits.
- Preserve the ability of insurers to write homeowners coverage in Texas.

## Judicial Selection

- Support merit selection of judges, especially appellate judges.
- Avoid the appearance of impropriety fostered by partisan elections and political contributions.

## Toxic Torts

- Eliminate the lower threshold for joint and several liability for toxic tort damages.

## Universal Jury

- Provide incentives for jury service by increasing juror pay and requiring employers to allow employees to serve on juries.
- Improve the jury selection process.

## Chairman's Column

by Bill Barton, Chairman  
Texas Civil Justice League

**Not since George W. Bush was elected Governor of Texas in 1994 have the prospects for liability reform been so bright.**



**"With a unified leadership and a pro-business Legislature, it is finally time to eliminate lawsuit abuse problems that have arisen since the 1995 reforms were passed."**

**Bill Barton**

Governor Rick Perry, an outspoken advocate for reform since he was a member of the Texas House, won a resounding victory in the gubernatorial election. Lieutenant Governor-elect David Dewhurst likewise won impressively on a pro-reform platform. And the next Speaker of the House, Rep. Tom Craddick (R-Midland), will have an unprecedented eighty-seven Republican colleagues to work with when the Legislature convenes on January 14, 2003. In fact, the GOP swept every statewide office and won commanding majorities in both the Senate and House.

With a unified leadership and a pro-business Legislature, it is finally time to eliminate lawsuit abuse problems that have arisen since the 1995 reforms were passed. It is also time to close loopholes in the existing laws created by plaintiff's lawyer manipulation of the system and necessary legislative compromises in the past.

The voters spoke loudly and clearly on November 5, 2002. They want a legal system that is fair to victims but that does not punish innocent parties, whether they are individuals, businesses, or health care providers. They want a system that fairly allocates responsibility among the parties that are truly responsible for the plaintiff's harm—including the plaintiff. They want to put an end to lawsuit abuse in medical liability and mass tort litigation, such as specious class actions and asbestos lawsuits.

The change in atmosphere is seen most directly in the Texas House. Speaker-presumptive Craddick is a longtime champion of liability reform and will provide strong leadership in the issue. House committees that for the last several sessions have bottled up reform legislation passed by the Senate will dramatically change. Just as importantly, the ability of the plaintiff's lawyers to advocate legislation of their own or to place crippling amendments on reform bills will be severely diminished.

In the Senate, Lieutenant Governor Dewhurst will preside over a strong group of pro-reform advocates, many of which have successfully sponsored tort legislation in past sessions. While passing legislation is never easy, we are confident that the new Senate leadership will act swiftly to approve tort reform legislation.

The Texas Civil Justice League, working together with other groups that support liability reforms, has already begun to assemble a complete package of legislative proposals. Our hope is that the Legislature will take quick action on liability reform next year. Familiar plaintiff's lawyer tactics to stall or delay action on tort reform are not likely to be countenanced by the legislative leadership or the Governor's office. We've

done enough talking about tort reform during the last eight years—it's time for results.

We are grateful to Governor Perry, Lieutenant Governor Dewhurst, and Speaker Craddick for putting the tort reform agenda high on their lists of legislative priorities. Undoubtedly, the plaintiff's lawyers will attempt to spread falsehoods and distortions about the legislation and its true impact on the legal system and on legitimately injured parties. We must be prepared to defend these proposals for what they are: critically needed reforms that restore balance and fairness to a system out of control. Defend them we will, and under the leadership of the Governor, Lieutenant Governor, and Speaker, we expect an outstanding and successful legislative session.

## Frivolous Lawsuits Target Restaurants and Retailers

by Glenn Garey  
General Counsel, Texas Restaurant Association

Are frivolous lawsuits a thing of the past? You'd think so after Texans voted the trial lawyers off the Supreme Court in the late 1980s. You'd think so after tort reform was signed into law by Governor Bush. You'd think that the trial bar would have gotten the message. But they haven't.

Some members of the bar seem to think our profession is about making money. If you close one lucrative field of law abuse, the hunt is on for another. That kind of approach to "making a living" out of the law isn't consistent with a good judicial system. The point of having a judicial system is to resolve disputes, not to create them.

I'll give you an example that just recently crossed my desk. In Texas sales tax is collected on flavored bottled water but not on unflavored water. Several restaurants and retailers collected sales tax on unflavored bottled water in error. Trial attorneys filed a class action lawsuit to recover the taxes.

We submitted an amicus curiae brief on behalf of Texas Restaurant Association and the Texas Retailers Association. Both trade associations had a number of members who were named as parties to the action and of course the issues raised were of concern to the entire membership of both associations.

In the brief we took the same position as that of the Comptroller of Public Accounts. *Serna v. H.E. Butt Grocery Co.*, 21 S.W.3d 330 (Tex App. – San Antonio 1999, no pet.) clearly establishes that such a suit is not allowed. Were suits such as this allowed to proliferate it would undermine the tax collection system and create a significant burden for those merchants who collect sales tax on behalf of the State.

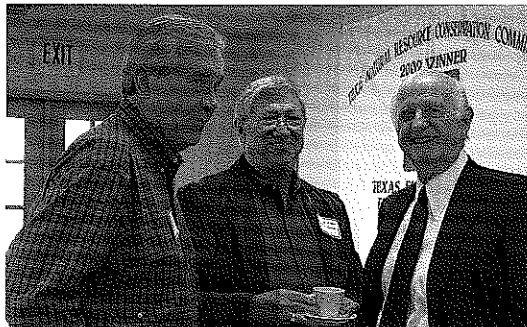
It is a fact that from time to time sales tax is erroneously collected. The Tax Code clearly anticipates this will occur and provides a simple and inexpensive remedy for obtaining a refund (Tax Code Sec. 111.104). The Tax Code further provides for the means for stopping a merchant from continu-

to erroneously collect taxes (Tax Code Sec. 111.011(b)).

Another provision provides for a direct action in District Court against the merchant by the person who pays the tax.

Of course if the lawyers who filed this class action wanted to resolve the tax issue they could simply have made a request to the Comptroller's office for a refund of the overpayment. We have advised many of our members to do this when they have been charged sales tax in error on a purchase (such as kitchen equipment). It's simple and inexpensive, but it doesn't generate lawyer fees. As of now the case is still pending before a district court in Beaumont.

**Glen Garey is the General Counsel for the Texas Restaurant Association, which represents the state's \$23 billion foodservice industry and its 500,000 employees.**



Ron Dipprey, Bill Barton, and Ralph Wayne visit before the TCJL Annual Meeting.



Robert L. Looney and TCJL members listen to an issue briefing from George S. Christian.



Richie Jackson and Olan Brewer laugh as TCJL members get a guided tour of the TDS Exotic Game Ranch and landfill facilities.

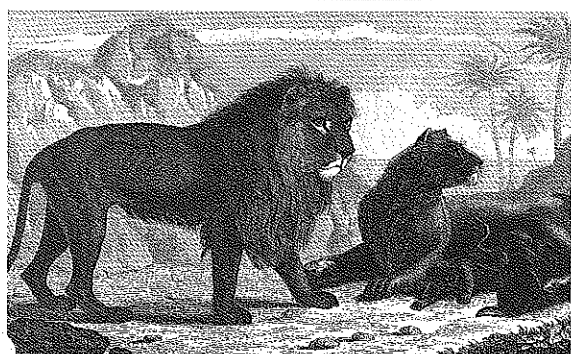


Admiral Bobby R. Inman, USN (Ret) discusses the "war on terror" with TDS Chairman and CEO Bob Gregory.



Texas Supreme Court Justice Wallace Jefferson visits with Sue Ann Frugé, TDS Director of Business Development and Community Outreach.

Photographs by Cary Roberts



## 2002 Annual Meeting Gets Wild

Directors and members of the Texas Civil Justice League converged on the Texas Disposal System's Exotic Game Ranch and Pavilion this past November for the 17th Annual Meeting. The morning session included an election recap by political analyst Olan Brewer, a review of upcoming issues by TCJL General Counsel George S. Christian, and work of the Texas Asbestos Consumers Coalition by coordinator Ron C. Dipprey. Before lunch, participants toured the exotic game ranch complete with approximately 800 acres that is home to more than 1,600 animals from thirty different species. Admiral Bobby R. Inman, USN (Ret) delivered the keynote luncheon address concerning the international "War on Terror."

