

# TCJL

# CIVIL JUSTICE ADVOCATE

A newsletter of the Texas Civil Justice League

## Workers' Comp Bites the Dust

To the surprise of few people in Austin, the June-July special session ended with workers' compensation reform still stalemated. After the roller coaster ups and downs of the workers comp issue in the regular and special sessions, it actually looked like a breakthrough might be occurring in the last week. Both Lt. Gov. Bill Hobby and Speaker Gib Lewis announced that a compromise on the issue had been reached "in concept." The two leaders then encouraged conference committee members to nail down the language so that a compromise could be voted on before *sine die*.

That's when the line hardened. It was the last spark of agreement between the two chambers. The House conferees rejected the "last chance" Senate proposal on Monday, setting the stage on Tuesday for a desperate try by Republican to take the issue away from Senate negotiators. When that attempt failed by a vote of 21-10, with two Democrats joining the eight Republican Senators, House and Senate conference committee members had little choice but to resume their doomed negotiations.

In the end, the differences between the two chambers especially on the issue of dispute resolution, proved too great and the hours too few for a compromise to be forged.

It remains to be seen if a few months and some behind-the-scenes work can make a difference when they return for another attempt in November.

## Products Liability: Still Waiting

The failure of workers' comp also had a deleterious affect on products liability reform. We were not successful in our efforts to have products liability added to the special session. Governor Clements said that he wanted to *keep attention focused on the workers compensation issue* and did not want to add anything to the session that might detract from it. This means it was extremely important that DTPA reforms and the rural medical bill were addressed in the regular session. They would have been caught in the same logjam had we not won those fights.

The Governor has announced that he will call another special session in October or November to reconsider workers' comp (and possibly several other issues such as school finance and single-member districts for certain judicial races).

Gov. Clements has also indicated to some of our members that he probably will add *products liability reform to the agenda of that special session*.

We must be careful not to relax while the tightly organized trial lawyers turn their attention toward blocking further tort reforms such as products liability. Please continue your contacts with your representative and senator and with the state's top leadership so that we can achieve this important tort reform.

## Texas Punitive Damages Law Bolstered

In an earlier newsletter we told you of the League's joining in as a friend of the court (*amicus curiae*) in a U.S. Supreme Court case involving punitive damages.

Recently, in *Browning-Ferris v. Kelco*, the Supreme Court ruled that the Eighth Amendment to the U.S. Constitution--the excessive fines clause--*does not limit the size of punitive damages awards*.

While at first the decision may seem a victory for anti-tort /reformers, four members of the court strongly indicated that *punitive damage awards may still be limited under the Fourteenth Amendment, which guarantees defendants due process of law* and could be used to regulate how juries are instructed to consider punitive damages, among other things.

And although the Court later declined to review three punitive damages cases which made the Constitutional due process argument, it may only indicate that the Court would like to see a consensus develop at the lower courts and state levels before taking action.

The case--which involved an award against Browning-Ferris Industries Inc., a Houston-based waste disposal company--has been followed closely by the business community. Supporters of Browning-Ferris have argued that the punitive award system is out of control, with plaintiffs winning punitive awards from companies far in excess of actual damages.

The Court upheld a punitive damage award of \$6 million against Browning-Ferris, which was found guilty of trying to drive a competitor out of business in violation of anti-trust laws. *The punitive damages award was 117 times the size of the award for actual damages*, leading Browning-Ferris to ask the court whether the award violated the Constitution's protection against excessive fines.

While not everything we could hope for, the *Court's decision does bolster the League-sponsored limitations on Texas punitive damages passed in 1987 as part of the tort reform package*.

And we can hopefully expect lower courts and other state legislatures to enact limitations on punitive damages, similar to those enacted by Texas in the 1987 tort reforms.

## Liability Alert

**Gone to the Dogs.** If a dog bites the little girl next door after she stomps on its tail, what are the legal consequences? When the neighbor demands a new pair of Gucci loafers after the dog fouls his walkway, can he collect in court?

These and other issues pertaining to canines and the courts are answered in a new volume that must by default be the definitive work of its kind. *Dog Law*, a self-help

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guide, is aimed at the owners of America's estimated 50 million dogs.

The book reports one case in which a New York judge awarded a distraught pet owner \$700 in damages for shock, mental anguish and despondency after she opened the casket of her beloved dog during his elaborate funeral, and found instead, a dead cat.

**At What Cost Pleasure?** What is the value of biting into a delicious-tasting, piece of barbecue brisket or a ripened, juicy slice of watermelon? What about smelling the sweet scent of a freshly mowed lawn or watching the Houston Cowboys win the Super Bowl? Incalculable? Not quite, say a Midwestern economist and

an attorney, who have teamed up not only to measure the value of life's pleasures but also to sue for them.

Their pioneering legal theory, which is slowly emerging in courts across the nation, is credited with winning millions of dollars in lawsuits.

"It's a version of the traditional damages given for pain and suffering," says Daniel Polsby, a law professor at Northwestern University. "Instead of putting a dollar value on the hurt you feel, it's trying to put a dollar value on all the fun you would have had that you won't be having." Proponents of the theory, call it the *hedonic* value of life, naming it after a Greek word meaning pleasure.

File this one under the heading of "What Won't They Think of Next!"