

Texas Civil Justice League



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The Advocate

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Texas Civil Justice League

by Nub Donaldson, TCJL Legislative Counsel

When I came to the Legislature in 1973, tort reform was a major issue. Only back then, "reform" meant abolishing the old rule of contributory negligence and giving consumers new remedies against businesses for unfair and deceptive trade practices.

In the flush of the legislative success we enjoyed during the 1995 session, we sometimes forget the long history that created the need for tort reform to begin with. I don't propose to detail that history here, but as we look forward to the future of tort reform in Texas, we need to bear a few things in mind.

In 1973 the Texas Trial Lawyers Association was already a powerful influence in the Legislature. That influence grew as liability laws expanded throughout the 1970's and 1980's. Texas did not become a paradise for plaintiff's lawyers by accident—it was the result of a deliberate, organized, and well-financed campaign to make Texas that way. Through domination of the Supreme Court and the legislative process, the plaintiff's bar pretty much had its way for a long time.

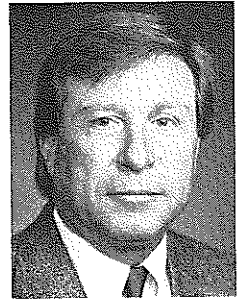
When these immense changes in the law were finally felt, large and small businesses, physicians

and hospitals, and local governments found themselves under siege. They responded in 1986 by creating the Texas Civil Justice League, the first state tort reform association of its kind anywhere in the nation. For the first time the TTLA was faced with organized, broad-based opposition.

It took the better part of two decades for the TTLA to reshape Texas tort law in its own image. It has taken the Texas Civil Justice League just nine years to start moving it back into the national mainstream.

In fact, the success of the TCJL has inspired many states to follow our lead. That success has also sparked other groups to get involved in Texas tort reform, which has undoubtedly enhanced the total effort.

The TTLA, however, is a permanent threat. Their only interest is favorable tort laws. They don't care about anything else. This means we have to be a permanent threat to them. As long as the TTLA exists, there is compelling need for the Texas Civil Justice League.



Small Business Update: Tort Reform Still Big Issue

by Robert Howden, State Director, NFIB/Texas

Small business continues to be a target for lawsuits. A recent informal survey of NFIB/Texas' 40,000 members found that 14.9% have either been sued or threatened with a third party liability lawsuit. This translates into thousands of lawsuits every year against Texas small businesses—and this is just one type of litigation.

To put the cost of these lawsuits in perspective, here's a real-world example. One small restaurant business in San Antonio was hit with six personal injury lawsuits last year. The business did not believe it was liable for any damages, so it refused to settle and took the cases the court. The jury sided with the

business in each of the six cases.

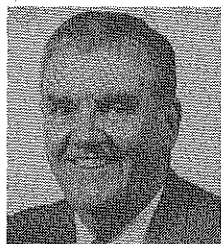
The problem is, it cost the business \$150,000 to defend these spurious suits—money that could have been used to expand the business and employ more workers.

Even when a business wins in court, its employees and customers lose in the long run if the litigation cannot be stopped.

Moreover, for every business that is courageous enough to risk one runaway jury verdict (much less six of them), there are probably ten who give in to the



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Chairman's Column

by J.P. Word

Before you and I know it, primary election day will be here again—March 12. That's still mighty early for those of us who had gotten used to May primaries, but the earlier voting has not reduced the amount of money legislative candidates raise and spend in contested primaries.

Most incumbents in the Legislature do not have primary challengers. Many of those who do are not seriously contested. The three senators with primary races—**Chris Harris** (R-Arlington) vs. **Jim Lollar**, **Mike Moncrief** (D-Fort Worth) vs. **Nancy Ward**, and **Jeff Wentworth** (R-San Antonio) vs. **Randy Staudt**—are all heavily favored to win renomination (and re-election, since there are no other candidates in those races).

About two dozen House members face primary challengers and I won't attempt to judge the seriousness of their races here.

In the Metroplex, it's Rep. **Jim Horn** (R-Denton) vs. **Vic Burgess** and **Doc Holladay**; Rep. **Nancy Moffat** (R-Southlake) vs. **Gary Wall**; plus two in Dallas: Rep. **Sam Hudson** (D) vs. **Kenneth Green** and **Terri Hodge**; and Rep. **Roberto Alonzo** (D) vs. **Domingo Garza** and **Luis Sepulveda**.

In Austin, Rep. **Sherri Greenberg** (D) is challenged by **Daniel Gustafson**; Rep. **Glen Maxey** (D) faces two opponents, **Abel Ruiz** and **Eloy De La Garza**. Also in Central Texas, Rep. **Harvey Hilderbran** (R-Kerrville) is opposed by **Steve Hopkins** of **Burnet**, and **Ed Kuempel** (R-Seguin) faces **Harold Bratcher, Jr.**

In San Antonio there are three contested races: Rep. **Robert Puente** (D) vs. **Yolanda Gonzales Alvarez**; Rep. **Bill Siebert** (R) vs. **David Swift**; and Rep. **Frank Corte** (R) vs. **Caron DeMars**.

Houston, with the largest delegation, also wins the prize of the most contested races. It's Rep. **Peggy Hamric** (R) vs. **Ethel Wolfe**; Rep. **Beverly Woolley** (R) vs. **Sam Fayad**; Rep. **Ken Yarbrough** (D) vs. **David Jones**; Rep. **Kevin Bailey** vs. **Baltazar Garcia**; Rep. **Harold Dutton** vs. **Harold Wilcox**; Rep. **Jessica Farrar** (D) vs. **Yolanda Navarro Flores**; Rep. **Garnet Coleman** (D) vs. **Alvin Roy**; and Rep. **Paul Hilbert** (R) vs. **Todd Langston**.

In South Texas, it's Rep. **Irma Rangel** (D-Kingsville) vs. **Jaime Carillo** of **Kingsville**; Rep. **Hugo Berlanga** (D-Corpus Christi) vs. **Trinidad Botello** of **Robstown**; Rep. **Eddie De La Garza** (D-Edinburg) vs. former Rep. **Juan Hinojosa**; Rep. **Sergio Munoz** (D-Mission) vs. **Kino Flores** of **Mission** and **Frank Puente** of **Harlingen**.

In Beaumont, Rep. **Al Price** (D) faces **Avdwin Samuel**. In El Paso, Rep. **Paul Moreno** (D) is challenged by **Gene Finke**.

I'll single out one of the races because of the strong support Rep. **Huey McCoulskey** (D-Richmond) has given to tort reform and the possibility that he has a serious challenge from **Dora Olivo** of **Rosenberg**.

We'll talk about November races somewhere down the road.

Update continued...

claimant's demands out of fear that a big verdict will put them out of business.

Remember, most personal injury trial lawyers make their money on the cases they can settle, not the cases they take to trial. That's why tort reform is so important to stopping illegitimate claims. If the law is fair and unbiased, businesses who believe they are without fault will not be afraid to go to court. Without the prospect of a quick settlement, personal injury trial lawyers won't file those claims.

It comes as no surprise that tort reform is a top priority for small business. Don't be fooled when personal injury trial lawyers allege that tort reform only helps big businesses. Tort reform helps small businesses just as much, and more importantly, it helps the employees and customers of small businesses.

NFIB/Texas is proud to have helped lead the fight for tort reform in 1995. We are proud to be a continuing part of the effort to make further improvements in 1997.

Robert Howden is a member of the TCJL Board of Directors.

California Vote Pits Tort Reformers Against Plaintiff's Lawyers

California's initiative and referendum process is both a blessing and a danger for tort reform efforts in one of the nation's litigation hotbeds. This March three reform propositions are on the California I&R ballot:

- A requirement that the loser in a class-action strike suit pay the winner's litigation costs (a strike suit is a mass shareholder action against a publicly-traded company when the company's stock prices fall);
- A 15% cap on contingency fees in personal injury cases; and
- No-fault auto insurance.

The California plaintiff's bar has responded by financing two initiatives of its own, which will appear on the November general election ballot. These initiatives would open California state courts to strike suits (overriding recent federal legislation making such suits more difficult to bring in federal court) and prohibit any limits on contingency fees.

One indication of the hypocrisy of the plaintiff's lawyers in California is the recent change in the name of the California Trial Lawyers Association. It is now called the "Consumer Attorneys of California." This wolf in sheep's clothing is expected to pour tens of millions of dollars into the I&R campaign.

Let's hope California voters can separate truth from fiction and approve these sweeping reforms.

Federal Appeals Court: Excessive Punitive Damages violate Due Process

The American Tort Reform Association (ATRA) reports that for the first time, a federal appeals court has determined that a punitive damages award can be so excessive that it violates a defendant's right to due process of law under the United States Constitution.

Former Associate Supreme Court Justice Byron White authored the opinion for the Eighth Circuit Court of Appeals in the case of *Pulls v. Amoco*. An Amoco employee sued Amoco for age discrimination and invasion of privacy based upon an abuse of sick leave by the employee. Amoco used the employee's credit card records to prove he had fraudulently requested sick leave. The company then required him to provide a doctor's report before submitting a claim for sick leave.

The trial court awarded \$2 in actual damages and \$500,000 in punitive damages—a 250,000-1 ratio. Justice White wrote that the award was “unreasonable and violates Amoco's substantive due process rights.”

The U.S. Supreme Court is now considering a similar case in which \$2 million in punitive damages was awarded against BMW. In that case, *BMW v. Gore*, BMW refinished a vehicle and sold it to a customer without informing him of the refinishing work. The Court's decision is expected later this year.

Jury Verdicts Rising Again

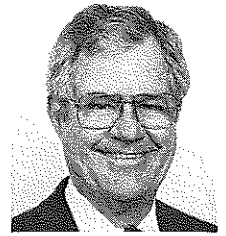
According to ATRA, jury verdicts nationwide are on the rise again. Citing the 1996 edition of the “Current Award Trends in Personal Injury” published by Jury Verdict Research, the size of jury awards has risen to a median of \$62,000 in 1995 from \$53,000 in 1994. In medical liability suits, the median compensatory award has risen 40%, from \$365,000 to \$500,000.

The most recent Tillinghast-Towers Perrin study of tort law trends shows that the cost of liability risk decreased by 5% between 1993 and 1994. The report believes the decrease is due to the fact that many companies have begun paying for costs internally rather than relying on insurance. Some of the decrease may also be attributable to more effective litigation control, more conservative courts, and a change in societal attitudes toward litigation and tort reform.

However, with the major trend moving toward mass tort lawsuits, it remains to be seen whether this slight decrease is real or just a blip on the radar screen.

Texas Moving Toward Judicial Reform

by John Hill, former Chief Justice, Texas Supreme Court
and founder of Texans for Judicial Election Reform



During the past session of the Texas Legislature, Lieutenant Governor Bullock and 22 courageous members of the Texas Senate took the first long step toward reforming the judicial selection system in Texas.

They passed a constitutional amendment and enabling legislation proposing a retention election system for our appellate judges and nonpartisan elections for our district judges. Although the bill did not make it through the House before the legislative session ended, the Senate's action was a great victory for the people of Texas.

As a direct result of the Legislature's serious consideration of judicial reform in 1995, the Senate and the House took the unprecedented step of appropriating funds to the Texas Supreme Court to undertake a comprehensive study of judicial efficiency, including changes in the current big-money system of partisan judicial elections.

Chief Justice Tom Phillips has appointed an outstanding and diverse group of Texans to the Judicial Selection Task Force, which is chaired by Dallas lawyer Tom Luce. The task force includes members of the House and Senate, judges, lawyers, businesspeople, and interested citizens. I am proud to be a member of this task force.

The task force is charged with recommending potential changes in the current method of judicial selection to the full Judicial Efficiency Commission, headed by Dr. Herbert Reynolds, former Chancellor of Baylor University. The Commission will then make its recommendations to the Legislature prior to the 1997 session.

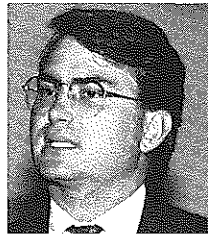
Texans for Judicial Election Reform has been working toward an opportunity like this since I helped create the organization in 1988. We still believe that a merit-based, nonpartisan appointive and retention election system for the appellate courts is the right solution for Texas, as it has been in the majority of states. Three different surveys by three different, highly respected pollsters have confirmed that the voters approve of such a system in overwhelming numbers. As evidenced by last session's progress, we see more and more members of the Legislature coming to the conclusion that a judge's only constituency should be the law.

The Texas Civil Justice League has been a tremendous help to us in our fight to eliminate the big bucks and partisanship from our judiciary. We urge all of the members of the League to help us finish this task in 1997.

Texans deserve a judiciary that is absolutely free from the appearance of impropriety. Texas judges deserve a system of judicial selection that rewards them for their qualifications, performance, and integrity, not their fundraising ability or partisan affiliation. With your help, we can erase the “Justice for Sale” image once and for all.

Despite 1993 Reform, Alfaro Abuse Persists

by Todd Olsen, Field Director,
Texans Against Lawsuit Abuse



Ever since the 1990 Texas Supreme Court ruling in the *Alfaro* case, non-Texas residents have been flocking to Texas to take advantage of our liberal tort laws and jackpot jury awards. For a time, Texas became the courthouse for the world.

In 1993 the Legislature took steps to stem the tide of foreign lawsuits. It passed legislation allowing trial judges to dismiss foreign cases if they should have been brought in another jurisdiction. This legislation has helped relieve the courts of lawsuits from foreign nations.

Unfortunately, the 1993 legislation does not give a trial judge the same level of discretion to dismiss lawsuits from our sister states. Some types of lawsuits can't be dismissed at all, which defies rational common sense.

As a result of these loopholes in the 1993 law, Texas has become a dumping ground for out-of-state lawsuits, especially asbestos-related suits. In the last four years, the number of out-of-state claims has skyrocketed more than 1,000 percent, and is doubling every year. Tens of thousands of claims are now pending in selected state courts around the state.

This is lawsuit abuse in its purest form. The only reason these cases are pouring into our state is the perception that Texas justice is something less than fair and equitable.

Faced with a similar (though not as egregious) problem with foreign lawsuits, the Supreme Court of the State of Florida recently moved to shut off the pipeline. Here's what the Court said in its decision to allow trial courts to dismiss out-of-state suits:

"We are mindful that the doctrine outlined above will limit the ability of some persons to take advantage of Florida's judicial system. While it is true that the Florida Constitution guarantees every person access to our courts for redress of injuries, that right has never been understood as a limitless warrant to bring the world's litigation here . . . Florida courts exist to judge matters with significant impact upon Florida's interests, especially in light of the fact that the taxpayers of this state pay for the operation of its judiciary. *Nothing in our Constitution compels the taxpayers to spend their money even for the rankest forum shopping by out-of-state interests.*" [emphasis added]

There it is in black and white. The personal injury trial lawyers who bring thousands of out-of-state claims to Texas are engaged in "the rankest forum shopping" imaginable. These cases should be boxed up and sent back to the states they came from.

Until they are, we cannot claim to have reformed Texas' tort system.

Plaintiffs Hit \$138 Million Punitive Damages Jackpot

A Harris County jury has awarded \$138 million in punitive damages against three defendants in litigation arising from a 1992 pipeline explosion near Brenham. The verdict is one of the largest punitive damages verdicts ever awarded in Texas.

The defendants in the case, Mid-American Pipeline Co., MAPCO Inc., and Seminole Pipeline Co., are expected to appeal the verdict. The jury found actual damages of \$5.4 million—that makes the ratio of punitive to actual damages a staggering 25-1.

According to a report in the Austin American-Statesman (February 15, 1996), one defendant had already settled compensatory damage claims for \$100 million. The punitive damages are in addition to the settlement amount.

Putting aside the question of whether punitive damages should have been awarded to begin with, the award is arbitrary on its face. Common criminals continue to have more protection against capricious and unpredictable punishment than Texas businesses do.

Let's hope the punitive damages reforms passed during the 1995 legislative session will put a stop to these jury jackpots.

Important Dates to Remember

Wednesday, February 21, 1996—Early Voting Begins
 Tuesday, March 12, 1996—Primary Election Day
 Tuesday, April 9, 1996—Primary Runoff Election
 Tuesday, November 5, 1996—General Election Day
 Tuesday, January 14, 1997—Legislature Convenes

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TCJL PAC Report

by Alex Short, TCJL Director of Political Education

March 12 is the first of three critical dates in 1996 for tort reform. It's primary election day, and we will get our first hard look at the mood of this year's electorate.

Our immediate task is to help pro-tort reform candidates to the Texas House and Senate get elected or re-elected. We have strong majorities in both Houses that will vote for meaningful reforms in 1997, if we can return them to office.

Several of our chief supporters are being challenged in their party primaries. This is a terrific opportunity for us to show that a vote for tort reform translates directly into success at the polls.

The Supreme Court races won't take place until November, but we are already beginning to get the word out to our members. The TCJL PAC is strongly supporting Chief Justice **Tom Phillips**, and Associate Justices **John Cornyn**, **James Baker**, and **Greg Abbott** for election to the Court. Chief Justice Phillips and Justice Cornyn have trial lawyer-affiliated opponents. Justice Baker is running against the San Antonio lawyer Gene Kelly, who in 1992 was nearly elected to the Court on the strength of his famous name. We can't afford to let down and risk the defeat of any of these excellent jurists.

We are proud to say that Justice Abbott is the first statewide Republican in Texas history candidate not to have Democratic opposition. The two Libertarian candi-



dates running against him don't have a prayer. Congratulations to Justice Abbott on this historic distinction.

The TCJL PAC-sponsored fundraising event for **Lieutenant Governor Bob Bullock** was held on January 30 in Austin. We wish to thank all of the TCJL PAC members, co-sponsors, and supporters who turned out for this event for their help. I don't need to tell you what Bob Bullock has meant for tort reform in Texas, and we hope he continues to serve Texas for a long time to come.

Politics is a two-way street: if you expect to get something done, you have to step up and elect the people who can do it. The personal injury trial lawyers learned this lesson back in the early 1970's, and they held power for almost 20 years. We're fighting them on more even terms now, but if we slack off even for one election cycle, they'll be back on top before you can say "ambulance chaser."

That's why we need your help. If you haven't contributed recently to the TCJL PAC, please send a contribution today. It will be used to fight the personal injury trial lawyers at the polls and for no other purpose.

We're the oldest tort reform PAC in the United States, and our bipartisan approach makes us the most successful as well. The reason we get things done here (in contrast to whatever it is they do in Washington) is that we don't play party politics.

Help us keep the personal injury trial lawyers on the run.

TCJL Mourns Loss of Senator Peyton McKnight

Former State Senator Peyton McKnight, an independent oil producer and long-time friend of the Texas Civil Justice League, died at his home in Tyler on Friday, December 22. He was 71 years of age.

Senator McKnight, who served as a member of the TCJL PAC Advisory Board for several years, was elected to the Texas House of Representatives while attending law school at the University of Texas. He served one term in the House, where he was a close colleague of TCJL's President Ralph Wayne. During his single House term he authored legislation creating the Texas Department of Mental Health and Retardation.

After leaving the House, Senator McKnight pursued a successful career in the oil business in Tyler. His appointment in 1953 as U.S. Marshal for the Eastern District of Texas made him, at age 28, the youngest Marshal in history. In 1972 he was elected to the Texas Senate.

Senator McKnight authored legislation creating the University of Texas at Tyler, served on the Interstate Oil



Compact Commission, and was a member of the most influential committees in the Senate: Finance, State Affairs, and Economic Development.

His public service was not limited to the Legislature. A decorated World War II veteran, Senator McKnight flew 55 combat missions over Europe. He served on the Board of Regents of his alma mater, Texas A&M University, which named him a Director Emeritus in 1986. He was a member of the State Democratic Executive Committee, the Development Board of the University of Texas Health Science Center at Tyler, and the Board of Scott and White Memorial Hospital.

Senator McKnight is survived by his wife, Ann; his two daughters, Molly McKnight Price and Jane McKnight Fender; and four grandchildren. He was interred at the State Cemetery in Austin.

"Texas has suffered a great loss, and all our prayers and thoughts are with Peyton's family," said Ralph Wayne, President of TCJL. "Everything Peyton McKnight did was for his family and his state. We will sorely miss his wisdom and experience."