

The Texas Civil Justice League honored Grant Billingsley and George Christian for outstanding contributions to civil justice reform at its 16th Annual Meeting.



## Laney and Ratliff Headline 16th Annual Meeting TCJL Honors Billingsley and Christian

More than 150 TCJL members and supporters attended the 16th Annual Meeting at the Austin Club last November. At the noon luncheon, **Grant Billingsley** of Midland received the **Alex Short Memorial Award** and **George Christian** of Austin was presented the **Millennium Award** for outstanding contributions to civil justice reform. Wayne Slater, Capitol Bureau chief for the *Dallas Morning News*, moderated a lively panel discussion with Lieutenant Governor Bill Ratliff and House Speaker James E. "Pete" Laney. During morning sessions, League members were briefed by Grant Billingsley, George Scott Christian, Nub Donaldson, Ed Pickle, Shannon Ratliff, Jack Roberts, and Ben Sebree on the accomplishments of the 77th Regular Session of the Texas Legislature and other upcoming issues. Olan Brewer discussed the impact of redistricting on the 2002 statewide elections. In addition, five new TCJL board members were elected at the annual meeting: Grant Billingsley, Johnny Gantt, Carl Hudson, Dennis Kearns, and John Mobley.

## TCJL Addresses Asbestos Litigation Crisis

### Texas courts lead the nation in the number of pending asbestos claims

Since 1995, the Texas Civil Justice League (TCJL), joined by other major business organizations and trade associations, has sought to stem the rising tide of asbestos litigation in Texas. In 1997, TCJL successfully spearheaded the effort to reform the Texas *forum non conveniens* statute to allow trial judges to transfer out-of-state asbestos claims back to their states of origin. While this reform has had a significant

impact on many claims with no connection to the state, Texas-based companies have nevertheless seen a substantial increase in asbestos litigation in Texas state courts. In the 1999 and 2001 sessions of the Texas Legislature, TCJL sought further general tort reform legislation to mitigate the growing impact of this and other litigation, including class action reform, prejudgment interest and settlement credit reform, and changes in joint and several liability. However, the scope of the asbestos litigation problem is clearly approaching a crisis point, and TCJL believes that asbestos-specific legislation is once again needed to deal with this imminent threat to the economic health of the manufacturing sector in this state.

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## New Effort Expected to Weaken Statute of Limitations, Venue Protections

During the 2001 legislative session, TCJL successfully defeated attempts by a small group of royalty owners and plaintiff's lawyers involved in oil and gas royalty disputes to weaken the four-year statute of limitations in oil and gas cases and roll back part of the 1995 venue reform statute. The two civil justice-related bills offered by the group, the Texas Land and Mineral Owners Association (TLMA), failed to clear committee in either house, despite an aggressive lobbying effort.

Essentially, the TLMA's proposal would have lifted the statute of limitations on any claim arising under an oil and gas lease by applying the so-called "discovery rule." Under the discovery rule, the statute of limitations begins to run from the time the plaintiff discovered or reasonably should have discovered the harm. **Texas, like most other states, does not recognize the discovery rule in contract actions**, including actions relating to oil and gas leases. Parties to a contract are obligated to act diligently to protect their interests, and the Texas Supreme Court and courts of other states have repeatedly held that, except in cases of fraud, the discovery rule should not apply. If the TLMA had succeeded in overturning this majority view, all **contract actions would have been vulnerable to the same change**, and Texas businesses would ultimately have been faced with the potential for unlimited liability. Fortunately, the Legislature rejected the TLMA proposal, thus affirming the Texas Supreme Court's recent rulings on the issue and keeping Texas law in the national mainstream.

Similarly, with respect to venue, the TLMA proposed a mandatory venue provision applying only to oil and gas leases. It would have required all suits relating to an oil and gas lease to be filed in the county where the oil or gas well is located, regardless of the nature of the claim. Texas law already requires actions affecting real property to be filed in the county where the property is located, so most environmental claims or claims relating to the land must already be brought where the land is. The TLMA proposal, however, was intended to change the venue law as it applies to a contract claim (i.e., royalty underpayment claims), which under the general venue statute must be filed (in most cases) in the county where the cause of action arose or where the defendant is domiciled. This special exception would not only have opened the door to a broader evisceration of the general venue law, but would have forced all oil and gas royalty disputes into courts in counties with little or no connection to the facts underlying the particular dispute. After all, in royalty claims, the relevant records and witnesses are generally located at the defendant's principal place of business, not where the well is located. A mandatory venue provision makes little sense in this context, and the Legislature clearly did not want to create a special interest venue exception that contradicts the intent of the 1995 venue reforms.

Last session TCJL led a coalition of business associations dedicated to preserving the current statute of limitations and venue laws from any change. This coalition includes the Texas Oil and Gas Association, Texas Pipeline Association, National Federation of Independent Business, Texas Chemical Council, Texas Association of Business and Chambers of Commerce, Texas Independent Producers and Royalty Owners Association, Greater Houston Partnership, Midland Chamber of Commerce, Association of Electric Companies of Texas, and other local chambers and business groups. If, as expected, TLMA remounts an effort to change the civil justice system for the benefit of a few large royalty owners and plaintiff's lawyers, the coalition pledges to respond with the same level of opposition that it did last session.

TCJL and its members are especially grateful to the members of the substantive committees that considered these proposals last session. They gave them full and serious attention before declining to change the existing statute of limitations and venue laws, and we want to recognize each of them here:

### House Civil Practices Committee

#### Senate Jurisprudence Committee

Rep. Fred Bosse (D-Houston)—Chair

Sen. Royce West (D-Dallas)—Chair

Rep. Kyle Janek (R-Houston)—Vice Chair

Sen. David Bernsen (D-Beaumont)—Vice Chair

Rep. Ron Clark (R-Sherman)

Sen. J.E. "Buster" Brown (R-Lake Jackson)

Rep. Harold Dutton (D-Houston)

Sen. Robert Duncan (R-Lubbock)

Rep. Ruben Hope (R-Conroe)

Sen. Rodney Ellis (D-Houston)

Rep. Trey Martinez Fischer (D-San Antonio)

Sen. Mike Jackson (R-LaPorte)

Rep. Joe Nixon (R-Houston)

Sen. Jeff Wentworth (R-San Antonio)

Rep. John Smithee (R-Amarillo)

Rep. Zeb Zbranek (D-Liberty)

### Senate Natural Resources Committee

Sen. J.E. "Buster" Brown (R-Lake Jackson)—Chair

Sen. Robert Duncan (R-Lubbock)—Vice Chair

Sen. Gonzalo Barrientos (D-Austin)

Sen. David Bernsen (D-Beaumont)

Sen. Teel Bivins (R-Amarillo)

The late Sen. Tom Haywood (R-Wichita Falls)

Sen. Eddie Lucio (D-Brownsville)

TCJL is grateful to each of these public servants for their willingness to work with us on these difficult issues, and we applaud them for their thorough and careful consideration of the serious policy implications of these proposed changes. TCJL looks forward to continuing to work together with these committees and members again as we approach the 2003 legislative session.

## TCJL PAC Endorses Judicial Candidates

With the March 12 primary elections fast approaching, the TCJL PAC is gearing up its slate card program for the Texas Supreme Court and selected appellate races. The PAC is also involved in a number of key legislative races around the state.

Five seats on the Texas Supreme Court are contested this year, a higher number than usual due to turnover on the court. For the court's top seat, Chief Justice Tom Phillips will face plaintiff's attorney Richard Baker, a Democrat from Liberty. In Place 1, Houston Court of Appeals Justice Mike Schneider (R) will face Justice Linda Yanez (D), a justice on the Corpus Christi Court of Appeals. Place 2 pits Democrat Jim Parsons, a district judge from Palestine, against one of three Republicans vying for the nomination: Fort Worth Court of Appeals Chief Justice John Cayce and two Houston district judges, Elizabeth Ray and Dale Wainwright. In Place 3, incumbent Justice Wallace Jefferson will square off in the Republican primary against attorney Sam Lee. The Democrat in the race is William Moody, an El Paso district judge. And in Place 4, incumbent Justice Xavier Rodriguez faces a challenge from Austin attorney Steve Smith. The Democrat is Houston Court of Appeals Justice Margaret Mirabal.

The TCJL PAC has endorsed incumbent **Justices Wallace Jefferson and Xavier Rodriguez** in the Republican primary. It is vital that voters go to the polls on March 12 and cast their votes in the Republican primary for Justices Jefferson and Rodriguez, who face unknown, unfunded opponents with potentially attractive ballot names. These superb justices must be re-elected in order to preserve the current court, which is known nationally for its high standards of scholarship and integrity.

Courts of Appeals races have assumed increasing importance in recent years. With their stranglehold on the Texas Supreme Court effectively broken, plaintiff's lawyers have focused their attention on influencing those judges who decide more than 95 percent of the appeals filed in this state. Courts of Appeals campaigns have consequently become much more expensive, especially in urban Courts of Appeals districts. The TCJL PAC began endorsing courts of appeals candidates in the 2000 election, and we are pleased to endorse Austin Court of Appeals **Justice Lee Yeakel** in the Republican primary for chief justice of the Third District. Other endorsements for the courts of appeals involve general election races, and we will determine those later in the year.

## Judicial Education Alliance Launches Web Site

For fifteen years, the Judicial Education Alliance has provided non-partisan information about candidates for the Texas Supreme Court, Court of Criminal Appeals, and Courts of Appeals. The program was established in 1988 to serve two

purposes: to educate voters about the importance of the state judicial process, and especially the impact that court decisions have on Texans; and to encourage Texans to be informed about, to register for, and to vote in statewide court elections. The Judicial Education Alliance is administered by the Texas Civil Justice League Education Fund.

The 2002 voter awareness effort will be anchored by a web site, which will be updated regularly throughout the campaign season. Visit the Judicial Education Alliance online at [www.texasjudges.org](http://www.texasjudges.org). In addition, printed display materials have been developed and are available by sending an e-mail message to [info@texasjudges.org](mailto:info@texasjudges.org). For more information, contact Cary Roberts at 512-320-0474.



## TCJL Addresses Asbestos Litigation Crisis

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Asbestos-related litigation has been a fixture of the civil justice system for the last twenty-five years. Ever since asbestos was definitively linked with pulmonary illnesses in the early 1970s, a literal avalanche of claims has inundated both state and federal courts. According to the Rand Institute, more than **half a million claims** have already been filed out of an estimated **27 million occupational exposures**. In the last two years alone, some asbestos defendants have experienced a **100 percent increase** in the number of asbestos claims, both those alleging serious asbestos-related illness (i.e., mesothelioma) and those in which no malignancy has been diagnosed. New claimant filings against these defendants have risen sharply every year, from just over 20,000 in 1997 to more than 45,000 in 2000. Unfortunately, analysts expect the trend to continue for at least another two to five decades, with claims continuing to escalate—especially in state courts. Even in Texas, where record-breaking litigation is the norm, the cost of asbestos litigation staggers the imagination. Rand estimates that asbestos manufacturers and other defendants have already paid out between \$30 and \$50 billion. As a result, forty-one asbestos-related companies have gone into bankruptcy, with ten major bankruptcies in the last year attributable directly to asbestos litigation costs. To make matters worse, companies that became insolvent in 2000–2001 were responsible for 75 percent of all asbestos payments to claimants.

That means that plaintiff's lawyers must find new defendants to foot the bill for an expected \$200 billion—or even larger—payout in the next twenty years. It goes without saying that 40 percent of \$200 billion is not a bad incentive for identifying a new class of deep pockets to keep the asbestos litigation industry up and running. **This new class of deep pockets does not include the now-defunct asbestos makers, but the thousands of businesses that used asbestos decades ago as the best available fire prevention technology: asbestos consumers.** Prime targets of asbestos claims now include a wide range of businesses: chemical plants, oil refineries, pipelines, utilities, manufacturers of all kinds, commercial real estate, hospitals, and even public entities such as schools and universities—any building or facility where asbestos might ever have been present is likely to attract claims for asbestos exposure. Moreover, any contractor or subcontractor that ever had anything to do with such a site is likewise vulnerable. **The potential liability of these large and small businesses is incalculable.** The bulk of all new asbestos claims—the available evidence suggests 50 to 90 percent—allege exposure to asbestos with no verifiable impairment. These claims seek compensation for the **potential development** of asbestosis or other pleural abnormalities as a consequence of past asbestos exposure, but present no evidence of actual injury. In fact, **97 percent of all asbestos claims involve non-malignancies.** Frequently, plaintiff's lawyers bundle or aggregate these unimpaired claims with alleged malignancies for the purpose of settling all the claims in a lump sum amount. This strategy avoids the necessity of actually establishing a particular claimant's injury; the one or two truly sick claimants in the group subsidize the twenty or thirty healthy ones. In other words, plaintiff's lawyers regularly use a single legitimate claim to leverage the settlement of dozens of specious ones, thus enhancing the lawyer's contingency fee and maintaining a steady stream of such settlements for cash-flow purposes.

**The tragedy of this system is clear: truly sick claimants in desperate need of compensation are forced to wait in line—sometimes for years—while their cases are "settled" and thousands of unimpaired claimants are paid off.** Substantial disparities exist in the amounts ultimately recovered by the truly sick. Crowded court dockets and lengthy delays postpone justice, sometimes until it is too late. Unimpaired claimants siphon off funds that should be dedicated to compensating those with serious asbestos-related illnesses; the escalating number of bankruptcies among asbestos defendants means fewer available funds to compensate them. **An astonishing 63 percent of the total payout in asbestos cases goes to litigation costs,** primarily plaintiff's lawyer contingency fees and transaction costs, leaving only thirty-seven cents on the dollar for the claimant. Too often the real victims of asbestos exposure are left with little to show for their claims, but the system leaves them little choice and no voice.

Clearly, Texas cannot wait until all of its employers and economic engines are destroyed before taking action to contain

the devastating spread of asbestos litigation in this state. TCJL, working with a coalition of business groups and trade associations that includes the Texas Oil and Gas Association, Texas Chemical Council, Texas Association of Business and Chambers of Commerce, and Texans for Lawsuit Reform, will advocate a legislative agenda in 2003 to achieve the following objectives:

- **assure that claimants suffering from legitimate, asbestos-related injuries are compensated fairly and promptly;**
- **stop the filing and bundling of specious, unimpaired claims with legitimate injury claims;**
- **provide that an individual defendant's liability is commensurate with its true percentage of fault in a particular claim;**
- **protect the due process rights of both truly injured parties and businesses involved in asbestos litigation;**
- **minimize transaction costs so that injured parties recover the maximum amount of compensation to which they are entitled; and**
- **restore predictability to a system which currently resembles a litigation lottery, in which the only real winner is the plaintiff's bar.**

It comes as no surprise that Texas courts lead the nation in the number of pending asbestos claims, although Mississippi is a strong second. Many of the largest and wealthiest plaintiff's asbestos firms are based in Texas, and their political influence is immense. Consequently, this coalition effort will require substantial resources to educate both the Legislature and the public about the harm the current system wreaks on both injured claimants and the Texas business climate. A system that pays billions of dollars to claimants with no verifiable injuries while truly sick people languish on backlogged court dockets is not only wrong, but outrageous. TCJL and the asbestos coalition will address this injustice, assuring that the truly injured receive their day in court without undermining the future financial viability of Texas' large and small businesses.

## Mark your calendar for the TCJL 17th Annual Meeting

**Thursday, November 7, 2002**

Texas Medical Association Building  
Thompson Auditorium, First Floor  
401 West 15th Street  
Austin, Texas

**Luncheon across the street at  
DoubleTree Guest Suites**

## Chairman's Column

BILL BARTON

It is generally believed that in our two-party system more is accomplished when there is a high level of bipartisanship rather than the noisy disagreements so common in Washington, D.C.

Texas has had its bitter quarrels between conservative and liberal politicians, but only in recent times have these been precipitated by either Republicans or Democrats jockeying fervently for full control of the agenda. Of course, when I served in the Legislature as a conservative Democrat from the Panhandle, there weren't enough Republicans on hand to convene a game of bridge.

There will be a sea change in state government when the 2002 elections are over. The one-vote Republican majority in the Senate will expand by two or three seats, and the House will in all likelihood have a Republican majority for the first time since Andrew Johnson was President. That is the best estimate of the analysts and the political reporters, and they are almost certainly on target.

Republicans already occupy all of the statewide executive and judicial offices and are favored to keep most if not all of these positions after the November election. The Democrats are mounting a much more extensive (and expensive) campaign than they did in the George W. Bush re-election year of 1998 and have high hopes that they can pick off two or three slots.

Regardless of the outcome, heavy-handed partisanship could be avoided like prickly pears. With the state facing a potentially huge budget problem, and with no one interested in new taxes, the Legislature will require considerable statesmanship to escape without lots of thorns stuck in the wrong places.

Here are a few elements of the change that's coming:

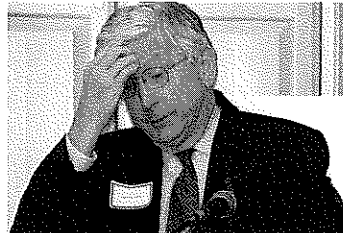
1. **The contest for Speaker of the House**—Speaker Pete Laney versus a Republican (Tom Craddick of Midland is the current leader among several candidates)—will be a bruising one, right up to the vote of the membership next January.
2. **Party caucuses will continue to grow in influence** as Texas moves toward the same majority/minority system as in the Congress.
3. **The Democrats in both Houses will have to cultivate new leaders** to replace prominent retirees, many of them committee chairs.
4. **There will be a new Lieutenant Governor**, probably with somewhat reduced power, but reports that it will become a figurehead are badly overblown.

True bipartisanship along the lines of the Bush-Bullock-Laney model will be difficult to achieve, but it remains a worthy goal for stalwarts in both parties.

## Highlights of the TCJL 16th Annual Meeting



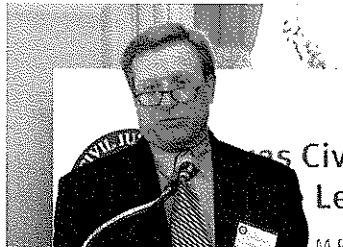
Lieutenant Governor Bill Ratliff responds to a question from Wayne Slater of the *Dallas Morning News*.



Shannon Ratliff recaps accomplishments of the 77th Texas Legislature.



Ed Pickle briefs TCJL members on asbestos, class action, and punitive damage reforms.



Nub Donaldson presides as master of ceremonies for TCJL's 16th Annual Membership Meeting.



George Christian and House speaker James E. "Pete" Laney at the TCJL 16th Annual Meeting.



George Scott Christian discusses the public policy implications of mold lawsuits.