

TCJL

CIVIL JUSTICE ADVOCATE

A newsletter of the Texas Civil Justice League

Take Two Aspirin and Call Your Attorney In the Morning

Apparently the aches and pains brought on by the law suit crisis have the potential to hurt more than our pocketbooks. There's a very real danger that it will cost us in terms of physical health, as well.

Leading medical scholars have expressed concern that the recent sharp decrease in applicants may create a generation of less qualified physicians if medical schools decide to soften admission standards to boost enrollments.

Contrast this drop in enrollment at medical schools with the increase in applicants at many of the state's law schools and we begin to see some of the more arcane results of the lawsuit crisis.

Officials at UT's Health Science Center in Houston said that some factors contributing to the decline in applicants is the publicity about the high cost of liability insurance and the bureaucratization of the medical profession. These factors, plus the high cost of a medical education, have discouraged some students from pursuing a career once perceived as glamorous and prestigious, not to mention its intrinsic value.

The Prescription of Justice

Here's some amazing facts that might explain why you have to wait longer to see your physician than your attorney:

*There is one attorney for every 380 Texas residents; but,

*Only one physician for every 577 Texas residents.

Now consider these questions:

*How many times a year do you and your family see your doctor?

*How many time a year do you see your lawyer?

How much these facts contribute to the tort reform crisis we can only guess. But this much is certain, we all pay for the increased cost of medical liability insurance which has increased 300 percent in the last 6 years. And medical liability losses are predicted to double every 2 1/2 years unless reforms are made to our current civil justice system.

Tipping the Scales of Justice

*In April, a Dallas jury awarded a Fort Worth-area man \$50,000 for actual damages and \$500,000 in punitive damages for his illness suffered after finding the remains of a mouse in his bottle of beer. While the punitive damages were later dismissed by the judge and the case settled out of court for an undisclosed amount, the case is another example of the trivia that is sweeping the civil justice system.

*Between 1974 and 1985 product liability cases filed in federal district courts increased from 1,579 to 13,544 — a 758 percent leap in just 11 years. During about the same period (1975-1986), the average product liability jury award increased by 401 percent.

*In a recent senatorial primary in Texas, plaintiff attorneys or their firms contributed over 70 percent of the reported contributions to the successful candidate.

*On May 16 the U.S. Supreme Court declined to rule on a case (*Bankers Life & Casualty Co. v. Crenshaw*) challenging the constitutionality of punitive damage awards under the U.S. Constitution's Eighth Amendment, which bars "cruel and unusual punishment" and "excessive fines." During oral arguments, some members of the court seemed particularly intrigued by the fact that a fine may be imposed by a jury with no standards whatever. While the court felt it did not have enough standing to rule in *Bankers*, we understand that several other cases challenging the constitutionality of punitive damages are in line to eventually be considered by the Court.

*The number of carriers of liability insurance for architectural firms has dropped from twelve to three in the last few years, and premiums for architectural and engineering firms may rise by 350 percent by the end of this year.

*During 1975 to 1986 the average medical malpractice jury award nationwide increased 835 percent. While in Texas according to the Texas Medical Association, obstetrical care has been reduced in 57 Texas counties due to the rising cost of medical malpractice insurance or fear of lawsuits. As a result TMA says that some women have been forced to travel long distances in order to have their babies delivered.

Issues Update

Medical liability reform. TCJL is working closely with members, such as the Texas Medical Association and the Texas Association of Obstetricians and Gynecologists, to develop the League's 1989 legislative program for medical liability reform. League President J.P. Word has appointed Dr. Bobby Shull, immediate past president of the Texas Association of Obstetricians and Gynecologists, chairman of the League's Medical Liability Reform Task Force. Dr. Shull has scheduled an organizational meeting of the task force for June 21.

Deceptive Trade Practices Act reform. TCJL's 1987 version of the tort reform bills would have applied to claims under the Deceptive Trade Practices Act (DTPA). At that time the plaintiffs' lawyers objected vehemently to the proposals, which is some measure of how helpful the reforms would have been.

The issue proved to be a major stumbling block, so the legislature decided to leave it as unfinished business and to study the DTPA during the interim. DTPA claims, therefore, were excluded from last session's tort reform laws.

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The DTPA exclusion is a major loophole in tort reform. Most, if not all, products liability claims can be cast as violations of the DTPA. Recent Texas Supreme Court decisions imply that all professional services are covered by the DTPA. A sharp lawyer can use the DTPA to avoid the effects of tort reform in these areas of law.

The Joint Committee on the DTPA, recently appointed by House Speaker Gib Lewis and Lt. Governor Bill Hobby, held its first meeting on May 6, 1988. The Joint Committee will study all aspects of the DTPA, not just its relation to the tort reform laws.

Comments during the hearing revealed that the plaintiffs' attorneys will aggressively push to liberalize the DTPA. They will try to make it easier to recover treble damages, perhaps seeking *mandatory* treble damages in all cases. They also might seek quadruple damages.

Attorney General Mattox wants to sue insurance companies under the Act. He also wants the legislature to increase the amount of civil penalties a court may award in suits brought by the A.G.

DTPA reform is a major battle. It's vital, unfinished business of tort reform. In recognition of the particular importance of DTPA, League President, J.P. Word has appointed a task force to come up with a legislative program on it to recommend to the Board.

We need your input. Let us know what problems you have with the DTPA. The League's DTPA Task Force will need all the help it can get in forming this part of our legislative program.

Workers' compensation. The legislative committee studying w/c has heard testimony from employers, employees, lawyers, doctors, insurance companies, and other affected groups in a series of hearings around the state. The committee is looking at ways to change the 75-year-old system in response to complaints that it is too expensive for employers and gives too few benefits for workers. Some of the suggested changes the committee is looking at include: eliminating lump sum awards,

allowing self-insurance, eliminating trial *de novo* and establishing a state insurance fund. The committee is expected to issue its recommendation to the Legislature in November. We'll keep you posted as the committee continues its hearings.

Products liability. On the national scene, products liability was the subject of a recent Conference Board report which found that the product liability system is having an adverse effect on the ability of corporations to effectively plan for the future; causing some corporations to close operations and lay off employees; causing corporations to cancel plans for new products; resulting in curtailment of promising acquisitions and new product research because of the uncertainties and fears related to product liability. The survey also found that CEOs believe product liability laws in this country have made America less competitive in world markets.

The League is putting together a task force to look at ways Texas law can be changed to restore predictability in the products liability area.

Judicial reform. Judicial reform continues to get a lot of attention in the Capitol. A joint legislative committee is currently considering whether Texas needs to change the way it selects statewide judges. And at least two groups have already proposed plans for doing so. The new "merit election" plan, proposed by Reps. Bruce Gibson and Terral Smith, and State Sen. Kent Caperton has proposed that nominees for appellate courts would face public hearings, gubernatorial selection and voter approval in non-partisan elections before they could serve as judges. The plan would apply only to the fourteen courts of appeals, the Supreme Court and the Court of Criminal Appeals.

An earlier plan for the "merit selection" of judges had been proposed by former Supreme Court Justice John Hill (founder of the Committee for Judicial Merit Election). In the Hill plan, nominees would be allowed to begin serving immediately, subject to Senate confirmation before facing election. Under the "merit election" plan the nominee could not take office without voter approval in a general election. Hill has joined in support of the new "merit election" plan.