

THE TEXAS CIVIL JUSTICE LEAGUE ADVOCATE

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Attack on Statute of Limitations, Discovery Rule, and Venue Laws Aimed at Bush's Legacy

AS reported in the last issue of the TCJL Advocate, a group of plaintiff's lawyers who specialize in class action lawsuits against oil and gas producers has launched an assault on the foundations of Governor Bush's and the Texas Legislature's civil justice reforms.

Their proposals would essentially eliminate the four-year statute of limitations in any claim pertaining to an oil and gas lease and allow plaintiff's lawyers to shop for the most favorable forum for their class action suits. If these proposals ever became law, it would be open season for the plaintiff's lawyers—not just on the oil and gas industry, but on the Texas business community as a whole.

The plaintiff's lawyers' special privilege legislation strikes at the heart of the 1995 and 1997 civil justice reforms championed by Governor Bush and the Texas Legislature. Those reforms were designed to eliminate the very type of special interest lawsuits the plaintiff's lawyers are now trying to reinstate.

Specifically, the 1995 venue reform bill did away with exceptions to the general venue rule that allowed plaintiff's lawyers to hand pick the courts where they wanted to sue. These special deals for the plaintiff's bar gave Texas the national reputation as a lawless jurisdiction. If a business sold a product or provided a service anywhere in Texas, it could be sued in any county regardless of whether it had any significant presence there. In other words, doing business here was like playing Russian roulette.

That's why the Legislature reformed the venue law to provide that a person must be sued in the county of its residence or where its principal place of business is located. This has substantially reduced forum shopping and restored a basic level of fairness to the system.

Now the plaintiff's lawyers are asking the Legislature once again to create a special venue exception to allow forum shopping in oil and gas cases. This is exactly how the venue statute was eroded in the first place; so many exceptions crept into the law that they swallowed up the general rule. Moreover, the

plaintiff's lawyers' proposal emasculates the venue law's fundamental principle—that a defendant should not be hauled before a hometown jury and keel-hauled into either settling a case for more than it's worth or risk a back-breaking, punitive judgment in a hostile court. To put it simply, if venue laws are unfair or riddled with exceptions, then the system as a whole cannot work impartially.

Similarly, gutting the four-year statute of limitations in oil and gas cases flies directly in the face of the 1997 *forum non conveniens* reforms, which eliminated special exceptions to the general forum rule for certain classes of claims. As you recall, during the early 1990s, Texas became a hotbed for cases from all over the world, prompting the *London Financial Times* to warn businesses against coming to our state. When the Legislature first attempted to close the loophole, which prohibited judges from dismissing claims with no significant relationship to the state, it excluded certain kinds of claims. Almost immediately, the types of cases excluded by the bill poured into Texas courts, clogging the system, for example, with more than 50,000 asbestos cases. In 1997, the Legislature revisited the issue and closed the remaining loopholes.

As if history is repeating itself, the oil and gas class action lawyers are attempting to reopen a loophole by asking the Legislature to single out their cases for special treatment under the general four-year statute of limitations for contract claims. If their bill passes, it will cause an explosion of litigation similar to that precipitated in 1993, when the first *forum non conveniens* bill was enacted. If past history is any indication at all—and in this case you can bet that it is—the oil and gas industry in Texas would face unprecedented and devastating litigation costs in the event this bill was passed.

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It is crystal clear that the class action lawyers are seeking to dismantle Governor Bush's and the Legislature's legacy of civil justice reform. Don't be fooled by their claim that these bills protect “property rights”; the only thing they do is open up an entirely new field of lucrative lawsuits that will wreak havoc on the Texas economy. Just as importantly, they will also create loopholes in the 1995 and 1997 reforms that will be exploited by other trial lawyers with their own special interest claims. The end result will be the destruction of the civil justice reforms we have worked so hard to achieve. ♦

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TCJL Outlines Legislative Agenda to Texas General Counsel Group

In A MEMORANDUM TO THE TEXAS GENERAL Counsel Group this spring, TCJL President Ralph Wayne laid the foundation for League's legislative agenda for the 77th Legislature, which convenes in January. The memorandum is reproduced here for the benefit of our members:

"We are currently aware of at least five pieces of legislation that will attack recent civil justice reforms and attempt to expand liability for Texas businesses:

- Legislation will be filed by others to eliminate the four-year statute of limitations in causes of action pertaining to oil and gas leases. This legislation could easily be expanded to all other businesses. TCJL is taking the lead in opposing this legislation and has already launched an aggressive defense of the current law.

- Likewise, legislation will be filed by others to reverse the 1995 venue statute and require a lawsuit involving an oil and gas

lease to be heard in the county where the land is located. This constitutes a direct attack on

the "agent or representative" reform we accomplished in 1995 and will open up the venue statute to further expansion. TCJL will vigorously oppose this proposal.

- The Texas Trial Lawyers Association (TTLA) began a major legislative effort last spring to reverse the Supreme Court's summary judgment rule reform. This is the subject of a House Civil Practices interim committee study, and we expect TTLA once again to file legislation to gut the summary judgment rule.

- TTLA will also attempt to strip the Supreme Court's rule-making authority and transfer it to the Legislature. TCJL opposed this legislation last session, and we will almost certainly see it again in 2001. The House Civil Practices Committee will study this issue in the next few months, and we will oppose any committee recommendation to endorse this legislation.

- A state qui tam statute has been proposed in each of the last two sessions, and we expect to see it again in 2001. TCJL has killed

this bill, but we need to be vigilant once again.

"In addition to these defensive efforts, TCJL will once again pursue meaningful class action reform and support Senator Robert Duncan's and Representative Rob Junell's constitutional amendment for the appointment and retention of Texas appellate justices and judges.

"Obviously, the TTLA and its backers are better funded, better organized, and more aggressive than ever. Last session, the TCJL was the only state tort reform association to oppose the plaintiff's lawyers' attempts to eliminate the statute of limitations with respect to oil and gas leases, remove the Supreme Court's rulemaking authority, and create a state qui tam action. No other group worked the Legislature on those issues. As of today, TCJL is the only state tort reform association that has identified these issues as its top priorities for next session. We look forward to working with you to make sure our hard-won reform efforts are protected in 2001." ♦

Wayne Re-Elected Chairman of American Tort Reform Association

AT ITS JUNE 12 BOARD MEETING IN Washington, D.C., the American Tort Reform Association re-elected TCJL President Ralph Wayne as chairman of the board of directors. Wayne, who will serve his second term as ATRA chair, is the only state civil justice reform association president to serve in this capacity.

TCJL has a long history of involvement in ATRA, which was created to bring greater fairness, predictability, and efficiency to the civil justice system through public education and legislative reform. Since 1986, the year TCJL was formed, 45 states and the District of Columbia have enacted some part of ATRA's legislative agenda. For example, 33 states have modified the law of joint and several liability; eight states have limited non-eco-

nomical damages; 21 states have changed the collateral source rule; 30 states have modified punitive damages laws; and 29 states have enacted statutes penalizing parties who bring frivolous lawsuits. Comprehensive product liability reforms have also been enacted in six states and is pending in several others.

Working closely with ATRA, TCJL has helped many states organize successful civil justice reform coalitions. In addition to leading Texas to reforms in punitive damages, joint and several liability, product liability, and deceptive trade practices, TCJL assists its multi-state members in achieving similar reforms in other states and supports effective, non-preemptive federal products liability and class action reforms. ♦



TEXAS CIVIL JUSTICE LEAGUE

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Letters

June 8, 2000

Joseph Lelyveld
Executive Editor
New York Times
229 West 43rd Street
New York, NY 10036

Dear Mr. Lelyveld:

Jim Yardley's recent article (May 29) about legal and political battles between Texas landowners and oil producers states that the "landowner's association is lobbying for new laws addressing concerns about royalties and the legal rights of landowners in disputes over property damage." What the story doesn't say is what some of those proposed "new laws" are and who is helping orchestrate them.

The landowners' association and a small group of plaintiff's attorneys who specialize in oil and gas royalty class action litigation are attempting to accomplish two things in the Legislature: repeal Texas's four-year statute of limitations as it applies to oil and gas contracts and carve out a special venue rule so that they can forum shop their class action cases. In other words, they are trying to create a protected class of lawsuits that are impossible to defend in order to collect millions of dollars in attorney's fees. If they are allowed to succeed, nobody doing business in Texas will be safe from a similar effort.

While the landowners' group does have legitimate concerns about environmental cleanup, well plugging, and effective notice of events or activities that might affect royalty payment, its attacks on the civil justice system have nothing to do with those concerns. They are simply another example of plaintiff's lawyer attempts to manipulate the Texas civil justice system under the guise of "property rights."

Sincerely,
Ralph Wayne

May 15, 2000

Rena Pederson
Editorial Page Editor
Dallas Morning News
POB 655237
Dallas TX 75265

Dear Rena:

The recent stories regarding the role of juries grossly mischaracterize the civil justice reforms enacted by the Texas Legislature since 1987. Unfortunately, it is impossible in a short letter to correct all of the misperceptions the articles perpetuate, but I feel compelled to make a few basic observations.

One of your general premises is that tort reform has limited both the authority of juries and the rights of injured persons. This is absolutely untrue and stems from a fundamental misunderstanding of the role of juries in our civil justice system. The basic duty of a jury is to determine the facts that are in dispute. The basic duty of a judge is to apply the law to those facts and determine the legal consequences. Judges have always been responsible for examining a jury verdict to make sure that it meets the legal standards. This judicial oversight is necessary to guard against a decision based on emotion or prejudice rather than the evidence. Most juries do a good job of limiting their deliberation to the facts. Only in rare cases are judges forced to step in.

Recent tort reforms have nothing to do with the jury's traditional responsibility, but with inequities in the law. To take one example from your story, the Legislature enacted a cap on punitive damages as part of a larger package of civil justice reform. The reforms responded to growing evidence that courts had loosened the legal standards and allowed virtually unlimited punishment for relatively mild misconduct. We don't prescribe the death penalty for people who write hot checks, yet defendants in suits all over the country faced monetary punishment of up to 400 times the actual damages. To put it in plainer terms, a relatively minor dispute over \$2,500 could have actually resulted in a punitive award of almost \$1,000,000. Recognizing that the punishment must bear some reasonable relation to the harm done, the Legislature tied the punitive damages cap to a multiple of the damages awarded to fully compensate the person. The jury still determines the facts and whether those facts warrant punish-

TCJL Responds to Media Stories on Civil Justice Issues

One of the TCJL's primary purposes, other than advocating civil justice reform in the Texas Legislature and court system, is to respond to media inquiries and reports regarding the civil justice system. Ralph Wayne, Bill Barton, George Christian, and George Scott Christian frequently talk to members of the press, and TCJL's point of view is generally well represented in state and national newspapers, such as the Dallas Morning News, Houston Chronicle, and Wall Street Journal.

Two recent examples of TCJL's media activity are reproduced below. The first is TCJL President Ralph Wayne's response by letter to the editor to a series of articles in the Dallas Morning News regarding the jury system. The second is Mr. Wayne's response to a story that appeared in the New York Times with respect to oil and gas issues.

ment; the judge applies the law to the jury's finding to be sure it meets the legal standards.

It is evident your reporters did a great deal of research and hard work. However, portions of these articles misrepresent other reforms, such as workers' compensation insurance and the Deceptive Trade Practices Act, in a similar manner. You simply take these issues out of context and misrepresent them as a "limitation" on a jury's authority, when in fact the duties and responsibilities of the jury have not changed.

Obviously, it's easier to approach complex issues like these by presenting simplistic analyses, or repeating anecdotes that present particularly egregious-sounding fact situations. A newspaper, after all, is not the place for a law review article. At the same time, we agree that there are serious issues regarding juries that policymakers should address, such as declining interest in serving on juries and increasing difficulties in screening unqualified jurors.

Inaccurate interpretations of the law in articles such as these do a disservice not only to the public, which was presented one-sided conclusions, but also to the Legislature. The Texas Legislature has gone to great lengths to develop a fair and balanced civil justice system based on the full facts, not on soundbites or headlines.

Sincerely,
Ralph Wayne

Chairman's Column by Bill Barton

Governor George W. Bush's campaign for the presidency is shining the spotlight on Texas. Media from all over the world have descended on the state, prying into every nook and cranny looking for something-anything-to report.

Guess what they're finding out? Texas is doing just fine. Our economy is booming, crime rates are down, public school test scores are up, people are getting jobs and off the welfare rolls. There are, of course, a lot of problems: traffic, air quality, and health care costs, to name a few.

But many of these problems are driven to a large extent by increases in both population and standards of living. We have more people on the road because people are moving here faster than we can build the infrastructure to transport them-but despite the growth, our traffic problems are still not nearly as bad as California's. We are doing a better job than ever of cleaning up the air, but economic growth is putting so many cars on the road that many of our cities are not in compliance (or soon won't be) with federal air quality standards. We have one of the finest health care systems in the country, but increasing utilization of the system is pushing up health care costs.

The same is true of the civil justice system. Thanks to Governor George W. Bush-with a lot of help from House Speaker Pete Laney, the late, former Lieutenant Governor Bob Bullock, Lieutenant Governor Rick Perry, a bipartisan group of House and Senate leaders, and the Texas Supreme Court-we have come a long way toward putting our

American Tort Reform Foundation Releases White Paper on Regulation Through Litigation

On March 17, 2000 the American Tort Reform Foundation released its first white paper: "The Dangers of Regulation Through Litigation: The Alliance of Plaintiffs' Lawyers and State Government". The paper, co-authored by the *Wall Street Journal's* John Fund and Martin Wooster of American Enterprise, takes an unflinching look at the bonding of elected officials and plaintiffs' personal injury lawyers.

The paper exhaustively documents two emerging trends: the abuses of the contingency fee process when state attorneys general retained plaintiffs' personal injury lawyers, and how the precedents established in state litigation against the tobacco

court system in order. We have reformed our tort laws, provided better funding for the courts, and gotten a handle on the worst abuses in the system. Today, Texas courts are no longer an international lawing stock.

But that doesn't mean there aren't problems that still need to be solved. Class actions are the newest lawsuit craze, enriching plaintiff's lawyers at the expense of the due process rights of individuals and businesses. Our method of electing judges in partisan elections too often attracts enormous campaign contributions from lawyers and parties with interests in the court, eroding public confidence in the impartiality of the judiciary. And plaintiff's lawyers, overflowing with money from the tobacco lawsuit and lucrative class action litigation, are planning assaults on Governor Bush's and the Legislature's reforms that promise to return us to the days when Texas was the "courthouse for the world."

The fact is that those reforms have helped produce billions in savings to Texas consumers and businesses, encourage investment and job creation in Texas, and create the environment for Texas' unprecedented economic boom. And they have done it without taking away a single Texan's right to seek a remedy in our court system for legitimate harm. That's because Governor Bush and the Legislature crafted the reforms to be fair to all parties to civil litigation-no special privileges for one side, no special deals for the powerful few, be they wealthy plaintiff's lawyers, multinational businesses, or anyone else.

Texas is doing just fine, and now is certainly not the time for any backsliding. We look forward to defending Governor Bush's and the Legislature's hard-won reforms next year-and to facing new challenges as well. ♦

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industry are now being used against other industries.

In several states, notably Arkansas,

Kansas, Pennsylvania, and Texas, plaintiffs' lawyers made sweetheart deals with state attorneys general, often with little or no oversight on the bidding process.

In Texas, the terms of former Attorney General Dan Morales' contract with five Texas plaintiffs' lawyers is the subject of a criminal investigation. In Pennsylvania, AG Mike Fisher simply awarded the contract to generous supporters of his reelection campaign, while in Kansas, AG Carla Stovall first awarded the contract to a well respected Kansas firm with tobacco litigation experience, only to back out of that agreement. She then awarded the deal to her former law firm, a firm that housed her reelection campaign.

While tobacco was the first industry to be targeted in a state recoupment case, no one knows which industry will be the last. To date, many cities have sued gun makers for the cost firearms allegedly inflict upon urban areas. In Rhode Island, AG Sheldon Whitehouse is suing the onetime makers of lead-based paint, and has pondered a similar lawsuit against the latex industry, while in neighboring Connecticut, AG Richard Blumenthal has pioneered a lawsuit against the managed care industry.

The ATR Foundation paper makes a definitive case that Robert Reich's dream has beset us: "The era of big government may be over, but the era of regulation through litigation has just begun."

To obtain copies of the paper, contact Michael Hotra, Director of the ATR Foundation at mhotra@atra.org. ♦

(Reprinted from ATRA's newsletter, *The Reformer*, Spring, 2000)

TCJL PAC Looks to November Elections

THE TCJL PAC IS IN THE MIDST OF A FUNDRAISING effort that will enable the PAC to participate meaningfully in several key legislative races this November.

Probably the most important race on the ballot is in Senate District 3, which pits State Representative Todd Staples (R-Palestine) against Democrat David Fisher, an attorney from Silsbee. This race is extremely important to the civil justice reform agenda. The TCJL PAC is strongly endorsing Rep. Staples, who has been a staunch supporter of civil justice reform since his election to the House in 1994. Rep. Staples' election is vital to Lieutenant Governor Rick Perry as well, since Republicans must maintain the seat in order to hold their one-vote majority in the Senate. Rep. Staples has served in the House with distinction and integrity, and deserves TCJL's

support in his Senate race.

The Staples-Fisher race is a battleground race of the kind we haven't seen for a while. The district is generally believed to be a swing district; incumbent Senator Drew Nixon (R-Carthage) narrowly prevailed in

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both of his successful elections. Both the Democratic and Republican parties are putting on a full-court press, and the race could end up being the most expensive Senate race ever.

That's why the TCJL PAC needs your help. Rep. Staples will have to raise well over \$1

million to mount a successful campaign. This won't be easy, but if we can't do it for a proven supporter of civil justice reform, we can't do it for anyone. Make no mistake: the plaintiff's bar is pulling out all the stops for this one. For example, notorious San Antonio plaintiff's lawyer Pat Maloney recently sent out a fundraising appeal for Fisher. Undoubtedly, Fisher will raise a substantial amount of money from plaintiff's lawyers, and you can expect a big chunk of that to come from the tobacco lawyers.

This is the type of race we can't afford to lose. If the plaintiff's lawyers regain control of the Texas Senate, they will not only stop any further reform efforts, such as class action reform, but they will succeed in passing their own anti-business agenda. Electing Rep. Staples is one way to prevent this from happening. Please contribute to the TCJL PAC. With your help, we can keep civil justice reform moving forward. ♦

Tort Reform Saves Texans \$7.6 Billion

TEXANS WILL SAVE AN ESTIMATED \$7.6 BILLION AS a result of civil justice reforms, according to a study released last month by The Perryman Group. According to the report, commissioned by Citizens for a Sound Economy, more than \$2.5 billion of the savings directly benefit consumers.

Highlights of the study include:

- Historically, Texas had a judicial system that was widely believed to be imbalanced. The unpredictability and risk associated with this situation added to the cost of living and doing business in Texas.
- The result of the new judicial procedures has been a more effective and efficient use of the state's scarce economic resources, savings on the goods and services purchased by consumers, and a stimulus to economic development; these efforts have benefited the entire state.
- The results of the analysis reveal that the total cost of the tort system in Texas in 2000 was \$15.482 billion. In absence of the recent changes, the costs would have been \$25.889 billion. Of

this amount, approximately 26.7 percent or \$2.777 billion, may be attributed to improvements at the national level.

The benefits to Texas consumers are significant:

- \$1.796 billion in annual cost savings from reduced inflation (\$216 per household)
- \$7.056 billion in annual total personal income (\$862 per household)
- \$4.234 billion in enhanced consumer spending per year (\$517 per household)
- Substantially improved job prospects; and
- A more efficient judicial system to compensate for legitimate losses

The Perryman study concludes that "tort reform measures also provided enhanced consumer choice, greater innovation, higher output, and lower prices." Advances in civil justice reform means "savings to the typical Texas household in terms of lower prices and total personal income may be viewed as equivalent to a \$1,078 annual reduction in the 'tort tax.'" ♦

PLEASE MARK YOUR CALENDAR

Texas Civil Justice League
15th Annual Meeting
Wednesday, November 8, 2000
Texas Medical Association Building
401 West 15th Street
Austin, Texas

Coffee and registration at 9:45 P.M.
Adjournment no later than 2:00 P.M.

This meeting will focus primarily on the impact of the national elections.