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TCJL Unveils 1996-97 Legislative Agenda

The Texas Civil Justice League is proposing a broad, common-sense legislative agenda for the 1997 session of the Texas Legislature.

Following on the heels of this year's tort reform successes, TCJL's Executive Committee appointed an Issues Committee to study and recommend further tort reform measures needed to keep Texas in the mainstream of national tort law.

The committee, chaired by TCJL's Legislative Counsel Jerry "Nub" Donaldson, is composed mainly of chief executive officers and general counsels of major Texas and national corporations and representatives of the League's numerous business and professional organization members.

After three months of review and discussion of the impact of the 1995 reforms, the Issues Committee has issued its recommendations to the League's Executive Committee and membership. The recommendations outline a program of 10 specific areas of reform that are needed to correct continuing inequity and unfairness in Texas tort law.

The recommendations, listed in no particular order of priority, are as follows:

- **Third party liability.** Although the Legislature took tentative steps to address the problem last spring, the fact remains that the current system of third party liability is grossly unfair to property owners and contractors. TCJL will spearhead the effort to adopt reasonable restrictions on third party liability that promote work-site safety, provide full

compensation to an injured worker (but not a double or triple recovery), and ensure that a third party defendant pays no more than its fair share of the injured employee's damages.

- **Forum non conveniens.** It's time to plug the loopholes in the existing *forum non conveniens* (Alfaro) statute. These loopholes permit tens of thousands of out-of-state cases to submerge Texas courts and throw up procedural barriers preventing judges from transferring foreign lawsuits to proper forums. TCJL will propose legislation to restore fully a trial judge's discretion to manage his court docket as the judge sees fit with respect to foreign lawsuits.

- **Venue-Multiple defendants.** The ability to use "sham" or nominal defendants to obtain venue against remote, deep pocket defendants has been one of the primary forum shopping abuses for years. The 1995 venue reform bill did not adequately deal with the problem. A fair mandatory venue provision for cases involving multiple defendants is vital to assuring that the venue reform bill has the intended effect of putting a stop to forum shopping.

- **Limit non-economic damages.** Jury awards are increasingly driven by enormous awards of "soft" damages like pain and suffering, mental anguish, loss of consortium, and the like. These non-economic damages continue to proliferate in our courts, defying objective calculation and making every jury award a potential lottery jackpot. Texas should follow the lead of other states and adopt reasonable limits on both the

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TCJL Legislative Program Attracts Enthusiastic Support

A diverse spectrum of business, trade, and professional organizations are lining up to advocate legislative adoption of TCJL's 1996-97 legislative program.

"This program helps everyone," said Nub Donaldson, TCJL's Legislative Counsel and Chair of the Issues Committee that developed the list. "There is not a single reform on the list that would put Texas outside the mainstream of tort law trends across the nation."

Here is what some of the leaders of these organizations have to say about the League's proposed legislative agenda:

"NFIB Texas applauds the Texas Civil Justice League for taking the lead on tort reform issues that are critical to small business, such as premises liability and limits on non-economic damages. We strongly endorse the League's 1996-97 program of work and will do everything we can to help accomplish it."

Robert Howden, State Director, NFIB/Texas

"We need to continue making progress on tort reform. The Texas Civil Justice League has outlined a legisla-

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Mark Your Calendars

Texas Civil Justice League's 10th Annual Meeting

to be held on
November 8, 1995

Special awards
will be presented to
Governor Bush,
Lt. Governor Bullock,
Speaker Laney,
and other legislators.

We hope to see you there!

TEXAS CIVIL JUSTICE LEAGUE Executive Committee

J.P. Word, Chairman
Robert G. Mickey, Vice Chairman
Ron Kessler Joe A. DaSilva
Frank Sturzl George Christian
Bill Barton

Officers

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The Texas Civil Justice League is a 501(c)(6) non-profit corporation and is the nation's largest tort reform coalition. League members include individuals, businesses, corporations, railroads, professional and trade associations, cities counties, hospital and school districts, law firms, and chambers of commerce. Texas Civil Justice League Advocate is produced as a service to our members. For information, Write: Texas Civil Justice League, 401 W. 15th Street, Suite 975, Austin, Texas 78701 or telephone 512/320-0474; FAX 512/474-4334.

Legislative Agenda *continued...*

type and amount of non-economic damages that may be awarded.

- **Premises liability.** Liability lawsuits against property owners have become a major growth area in tort litigation. Current laws are confusing and discriminatory, often requiring a property owner to assume the role of the police force. Rules of premises liability should be clear and uniform, and protect property owners who take reasonable security and safety measures.

- **Judicial reform.** Partisan election of judges continues to erode public faith in the fairness and impartiality of the judiciary. Despite recent efforts to limit spending in judicial races, political parties, lawyers and interest groups will continue to pour millions of dollars into judicial coffers. It's time to consign this antiquated and broken down system of selecting judges to history. A constitutional amendment for the merit selection of judges should be submitted to the voters of Texas in the 1997 general election.

- **Pre-judgment interest.** Pre-judgment interest adds millions of dollars per year to the cost of the tort system and should be abolished. Intended to provide a incentive to the timely resolution of disputes, it actually has the opposite effect of encouraging delay to increase the claimant's eventual recovery. It's time to do away with this court-imposed giveaway.

- **Collateral source rule.** Current law allows a claimant to recover more than 100% of his damages in many cases because collateral benefits received by the claimant for his injuries may not be deducted from the final recovery. The 1995 Legislature made an exception to this rule in limited circumstances involving premises owners and contractors, but the concept must be extended to all liability lawsuits and unsubrogated collateral benefits.

- **Eliminate sliding scale election.** Under the current joint and several liability statute, if there is more than one defendant in the case and one of the defendant settles with the claimant, the amount of the settlement is offset against the final recovery. Although it stands to reason that the offset should be on a dollar-for-dollar basis in all cases, this is not true. The statute contains a "sliding scale" offset which invariably results in a less than dollar-for-dollar reduction, thus allowing the claimant to recover more than 100% of his damages. If any one defendant, in collusion with the claimant, elects the sliding scale, all other defendants are bound by it. This is a gross injustice and the sliding scale should be eliminated.

- **Government standards defense.** Efforts to institute a government standards defense against liability and punitive damages have thus far failed. There is no greater injustice in the current tort system than requiring a business to comply with costly government regulations governing the design, manufacture, and marketing of a product, and then to allow the business to be held liable in spite of such compliance. A government standards defense is long overdue in Texas law.

The proposed legislative agenda will be presented to the TCJL Executive Committee and membership at the League's annual meeting on November 8.



Legislative Program Support *continued...*

“The program for the 1997 session that all businesses—small, medium, and large—can enthusiastically support.”

Dane Harris, President, Texas Association of Business & Chambers of Commerce

“Texas has come a long way, especially in areas like the Deceptive Trade Practices Act, punitive damages, and joint and several liability. It’s time now to turn our attention to problems that are not so obvious, such as pre-judgment interest and the collateral source rule. We stand ready to do everything we can to promote the Texas Civil Justice League’s plan of action.”

Lyle Johansen, Texas Association of Builders

“Cities continue to be a target for liability lawsuits. Even if the city successfully defends the suit, it still costs taxpayers thousands of dollars every time we go to the courthouse. The Texas Civil Justice League’s 1997 legislative program is aimed directly at reducing litigation costs while preserving fair and balanced liability rules. The Texas Municipal League looks forward to working with the TCJL to achieve these needed reforms.”

Frank Sturzl, Executive Director, Texas Municipal League

“The Texas Civil Justice League has proposed a legislative program for 1997 that builds on many of the 1995 reforms in medical liability lawsuits. Just as the TCJL fully backed the reforms sought by the Texas Medical Association last spring, we will do everything we can to assist the League in its future reform efforts.”

Robert Mickey, Executive Vice President, Texas Medical Association

“The Texas Association of Realtors and the Texas Civil Justice League have always shared the same interest in strong tort reform. The reforms proposed by the League’s 1997 program are a logical extension of the work done by the Legislature this spring. We’ve got to keep the tort reform ball moving forward.”

Benny McMahan, Executive Vice President, Texas Association of Realtors

“Tort reform is an ongoing process. Texas law has gotten so far out of balance that it will take more than one or two sessions to bring it back into line in an orderly manner. The Texas Civil Justice League has proven that a well-defined approach works best in the Legislative process.”

Bill Powers, Director of State Affairs, Texas Farm Bureau

“The Texas Association of Defense Counsel has enjoyed a tremendous relationship with the Texas Civil Justice League through the years. We share the same concerns about the devel-

opment of tort law in Texas. The League’s 1997 legislative program deals with many of the problems that have not yet been addressed by the Legislature.”

Russell Serafin, President-Elect, Texas Association of Defense Counsel

“I know that some people think we’ve finished tort reform, but the fact is that we’ve just gotten started,” said Ralph Wayne, TCJL’s President. “Don’t forget that the 1987 Joint Legislative Committee on Tort Reform made 30 reform recommendations, and since then we’ve had serious new problems crop up with forum non conveniens and third party liability. You can never close the book on tort reform.”

Plaintiff’s Lawyers Beat September 1 Deadline With Lawsuit Binge

The Austin American-Statesman reported that three times the average number of lawsuits were filed in Travis County on August 31 (“Tort laws inspire rash of last-day suit filings,” *Austin American-Statesman*, September 1, 1995).

According to the report, 231 suits were filed the day before the tort reform package passed by the Legislature this spring was scheduled to go into effect. On average 70 lawsuits are filed every day in Travis County. Although the story does not indicate what kinds of cases were actually filed, it is clear that part of the surge is attributable to the effective dates of the various tort bills.

Joe Crawford, Immediate Past President of the Texas Association of Defense Counsel, said in the story that the tort reform laws help eliminate the “roulette factor” by discouraging the filing of marginal or meritless suits in hopes of coercing a settlement.

Texas Trial Lawyers Association President Bill Whitehurst conceded that the new laws would force plaintiff’s lawyers to scrutinize prospective lawsuits more carefully. He also noted that the new laws may actually lead to more jury trials.

“This article tells the story of why Texas needs tort reform,” said Ralph Wayne, TCJL President. “For ten years we’ve been saying that our tort laws encourage intimidation by lawsuit. Now even the plaintiff’s lawyers appear to agree with that, and the surge filings to beat the September 1 deadline tends to prove it.”

Review of Effective Dates of New Legislation

Venue (SB 32)—The new venue law applies to all suits filed on or after September 1, 1995. Venue changes with respect to FELA and Jones Act suits (railroad and maritime) apply to suits filed on or after January 1, 1996.

Punitive damages (SB 25)—Punitive damages reforms apply to causes of action that accrue on or after September 1, 1995. Causes of action that accrue before September 1 are governed by prior law, regardless of when suit is filed.

Joint and several liability (SB 28)—Generally, the new joint and several liability law applies to causes of action that accrue on or after September 1, 1995. If a cause of action accrues before that date, the prior law applies if suit is filed before September 1, 1996. The new law will apply to all suits filed on or after September 1, 1996. The changes relating to contractors and property owners apply to causes of action that accrue on or after September 1, 1996.

Deceptive Trade Practices Act (HB 668)—DTPA reforms apply to causes of action that accrue on or after September 1, 1995. If a cause of action accrues before that date, the prior law applies if suit is filed before September 1, 1996. Suits filed on or after September 1, 1996, are governed by the new law. Venue in DTPA actions is governed by the new venue law, which applies to suits filed on or after September 1, 1995. (Changes relating to debt collectors apply to suits pending on May 30, 1995, and suits filed thereafter.)

Frivolous pleadings (SB 31)—This bill applies to suits filed on or after September 1, 1995.

Medical malpractice (HB 971)—Medical malpractice reforms governing bond requirements, expert reports, payments on bonds, and qualifications of expert witnesses apply to suits filed on or after September 1, 1995. The new limits on prejudgment interest apply to actions that accrue on or after September 1, 1995.

States Taking Lead on Tort Reform

A recent article in the American Bar Association Journal ("A Changing Landscape—As Congress struggles to rewrite the nation's tort laws, the states already may have done the job", August 1995) publicizes what we already knew: state legislatures are the real engines of tort reform, while Congress can't seem to raise enough steam to get up the last hill.

Earlier this year the U.S. House of Representatives passed a significant tort reform bill that caps noneconomic damages in medical malpractice cases to \$250,000, limits punitive damages to the greater of three times economic damages or \$250,000, and eliminates joint and several liability in civil cases. It also passed a modified "loser pays" rule that requires a party rejecting a settlement offer to pay the other side's attorney's fees if the ultimate judgment is less than the rejected offer.

On the other side of the Capitol, the U.S. Senate passed a bill limiting punitive damages to the greater of \$250,000 or two times compensatory damages and eliminating joint and several liability. The bill only applies to products liability cases.

Whether the two sides will be able to work out a compromise bill before the end of this year's session is cloudy. However, while Congress debates, the states are acting.

The ABA article cites data from the American Tort Reform Association showing that since 1986, a growing number of states have taken tort reform into their own hands:

- 41 states have modified or abolished joint and several liability;
- 31 states have enacted products liability reforms;
- 27 states have capped punitive damages, including 4 states that do not permit punitive damages;
- 17 states have capped non-economic damages; and
- 8 states require damages awards to be offset by collateral sources of compensation.

"While the Texas Civil Justice League applauds Congress for its efforts, we believe that Texas and the other states can't wait for Washington," said Ralph Wayne, TCJL's President. "In fact, Texas has its own unique problems that cannot be addressed by congressional action, such as venue and forum non conveniens. We are moving full speed ahead to solve our own problems."

TCJL PAC Administrative Fund Taking Contributions

The Texas Civil Justice League PAC has established an administrative fund to pay for expenses that are not considered to be political contributions or expenditures under rulings by the Texas Ethics Commission.

The types of expenses permitted to be paid from the fund are typical office expenses, such as rent, utilities and supplies. No political activity may be connected with these expenditures; only those costs that any ongoing business has to pay are included.

The advantage of the administrative fund is that corporate donations are permitted for this purpose. Because the corporate donations are not used for political contributions or expenditures, the Ethics Commission has determined that they are not political contributions. Of course, Texas law prohibits corporations from making political contributions or expenditures, except for ballot measures.

For a full discussion of the issue, you may refer to Ethics Advisory Opinion No. 132. If you would like a copy, please contact Juli Bierman in the TCJL office.

★ Filing Deadline, Election Dates Closing In—TCJL PAC Needs \$\$ ★

by Alex Short, TCJL Director of Political Education

It's time to get serious about the 1996 election cycle.

Filing for the 1996 election begins on December 3 and closes on January 2, 1996. The March "Super Tuesday" primary is slated for March 12. The 1996 general election is less than 14 months away, November 5. The struggle to pass the TCJL's 1996-97 legislative program has already begun.



Alex Short

Here is a rundown of the TCJL PAC's activities as we enter a pivotal election year.

We are just now receiving responses to our most recent solicitation, which went out a few weeks ago to more than 10,000 households. By the end of this year alone, TCJL PAC will have contacted approximately 40,000 potential contributors. We anticipate that TCJL PAC membership, which currently stands at more than 2,200, will continue to climb throughout the remainder of this year and 1996.

1996 will be an extremely active year for legislative campaigns. Of the 150 seats in the Texas House of Representatives up for election, I expect a higher than usual incidence of close, hotly contested races. Of the 15 Texas Senate races (that is, unless a federal court orders all 31 senators to run again), we anticipate at least a half-dozen tough races. This is due partly to the growing parity between the two major political parties in the state and partly to the high public profile of tort reform issues, which have done more to bring out the differences between

candidates than any single business-related concern.

Just as importantly, there will be a total of four Texas Supreme Court races on the ballot. Chief Justice Tom Phillips and Justice John Cornyn, both of whom are advocates of judicial restraint and strong proponents of court reform, have our strong and loyal support, as they have in the past. We believe the plaintiff's bar will field candidates against Justices Phillips and Cornyn (who are both Republican), backed by millions of dollars of trial lawyer money for a smear campaign.

In the third race, incumbent Justice Bob Gammage, a Democrat, resigned from the Court effective September 1, 1995. This means that a gubernatorial appointee will be running in 1996 as a Republican incumbent in this seat.

The fourth race is necessary because Justice Jack Hightower, a Democrat, has announced that he will resign effective January 1, 1996. Governor Bush will appoint his successor, who will run as a Republican on the ballot next year to fill Justice Hightower's unexpired term. Whoever is appointed will have to run again in 1998. Judge Abbott is the likely appointment to this seat. We expect the trial lawyers to put up well-financed candidates in both the Gammage and Hightower seats.

The TCJL PAC is poised to make the decisive difference in these races. If we win at the polls in November, 1996, the Governor will be signing our bills in May, 1997. Thanks to all the contributors who have already answered the call. If you haven't sent your contribution yet, please do it today.

Judicial Campaign Finance Reform Bill Takes Effect

Legislation limiting contributions and expenditures in judicial races applies to the 1996 election, and PACs and individuals who contribute to judicial candidates need to get up to speed on the new requirements.

The primary provisions of the bill that affect contributions are as follows:

- Contributions may be made only during a specific period of time around the date of the election in which the candidate is running. Generally, the time period runs from 210 days prior to the filing deadline to 120 days after the election in which the candidate was opposed. The current contribution period therefore began on about June 3 (the filing deadline is January 2, 1996).

- Limits on contributions are in effect for each election. The limits are \$5,000 for the Texas Supreme Court and Court of Criminal Appeals and for any court if the population of the judicial district is more than one million; \$2,500 if the population of the district is 250,000 to one million; or \$1,000 if the population of the district is less than 250,000.

- The limits do not apply to contributions by general-purpose PACs. However, a judicial candidate may not accept

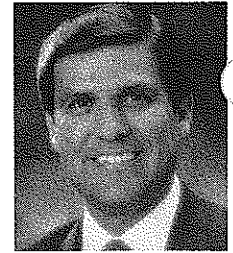
aggregate contributions from all PACs in excess of 15 percent of the expenditure limit for that candidate's race. For the Supreme Court, for example, the expenditure limit is \$2 million per election. The aggregate PAC limit is \$300,000 per election. Direct expenditures by PACs will be counted under the contribution limit unless the treasurer of the PAC files an affidavit with the Ethics Commission that the PAC has not communicated with the candidate's campaign about the expenditures.

- There are specific contribution limits for lawyers and law firm PACs. A member of a law firm or law firm PAC may not contribute more than \$50 to a judicial candidate if the aggregate of all contributions from other members of the same firm or PAC exceeds six times the applicable contribution limit. Taking the Supreme Court as an example, this provision limits law firm/ law firm PAC contributions to \$30,000 per election to a Supreme Court candidate.

This brief is not intended to be a detailed exposition of the new law. If you have any questions about how it affects you or your PAC, please contact the TCJL office.

Senator Lucio Addresses Statewide CALA Conference

Senator Eddie Lucio (D-Brownsville), a stalwart supporter of tort reform, was a featured speaker at the Third Annual Texans Against Lawsuit Abuse Conference in South Padre Island, which was held on August 25, 1995. Hundreds of directors and members of the ten local Citizens Against Lawsuit Abuse (CALA) groups attended the meeting.



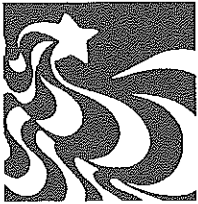
Senator Lucio

Senator Lucio commended the CALA groups for their work in raising public awareness of the cost of the liability system to ordinary citizens. He also urged them to redouble their efforts to keep the public informed about the need for further reforms in the next session of the Texas Legislature.

For more information about Citizens Against Lawsuit Abuse and how you can get involved, call Rossanna Salazar or Todd Olsen at (512) 476-8626.

YES! I want to help reform our civil justice system. Enclosed is my check in the amount of:

\$1000 \$500 \$250 \$200 \$100 \$50 Other _____



Please make checks payable to: TCJL PAC, 401 W. 15th St., Ste. #975, Austin, TX 78701

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NOTE: This information required for reporting purposes.

Corporate checks may be accepted solely for administrative purposes, not for political activity.

9/95

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