SUMMER 2022

TLR ADVOCATE

TEXANS FOR LAWSUIT REFORM: MAKING TEXAS A BEACON FOR CIVIL JUSTICE IN AMERICA

SUMMER 2022

IN THIS ISSUE

OUR MISSION

Texans for Lawsuit Reform is a volunteer-led organization working to restore fairness and balance to our civil justice system through political action, legal, academic and market research, and grassroots initiatives. The common goal of our more than 18,000 supporters is to make Texas the Beacon State for Civil Justice in America.

1701 Brun Street, Suite 200
Houston, Texas 77019
www.tortreform.com
tlr@tortreform.com

@lawsuitreform

MAKE TEXAS A BEACON for CIVIL JUSTICE in AMERICA

Leg Ad Pd for by Texans for Lawsuit Reform
Richard J. Trabulsi Jr., Chairman
919 Congress, Suite 455, Austin, TX 78701

Defending the Texas Miracle

By Richard J. Trabulsi Jr., TLR Chairman

It was way back in December of 1993 when Dick Weekley called together a few dozen friends in Houston to discuss the deplorable state of the Texas civil justice system. From that first meeting, under Dick's leadership, there emerged a dedicated group of community leaders across Texas to establish and empower Texans for Lawsuit Reform and TLRPAC.

Since then, TLR has actively engaged in 14 legislative sessions and TLRPAC has engaged in 14 election cycles. The results have been dramatic—moving Texas from its international reputation as the "lawsuit capital of the world" to a model for lawsuit reform. Those tort reforms have been credited by the financial press and by Texas governors, lieutenant governors and House speakers as a key to our state's remarkable economic growth, known as the Texas Miracle. Our economy has catapulted to the tenth largest in the world and our state has been the national leader in job creation for years due to this strong economic foundation, underpinned by tort reform.

Because of tort reform's success in Texas, TLR is often visited by business and professional leaders from other states for discussions on how the Texas reform movement can be replicated. While our visitors seek to learn from us, we also learn from them.

One of the most important lessons we have learned is that even in Republican-majority states, lawsuit reform has been stymied by personal injury trial lawyers who win legislative office as Republicans. Those Republican trial lawyers embed themselves in the key committees through which civil justice issues travel, allowing just a few Republican trial lawyer opponents of tort reform to choke legislation. Not only do they prevent common-sense reforms, but they are able to enact legislation to create new causes of action or expand existing ones.

I draw your attention to page five, where our guest columnist, the president of the Florida Justice Reform Institute, highlights how Republican legislators tied to the personal injury trial bar have replaced long-standing Republican principles of fostering market competition and innovation by reducing regulatory burdens "with a new agenda of regulation through litigation . . . ."

That has not happened in Texas due to the vigilance of the business community, which unites on civil justice issues, even when divided on matters such as taxation, regulation or social issues. But Texas personal injury trial lawyers know Republican majorities in the Texas Legislature are likely to prevail for years, so they are exponentially increasing their efforts to elect friendly Republicans to office and influence those already in the Legislature. If we in the business and professional communities ignore those efforts and do not engage effectively to counter them, we do so at the peril of our justice system and the Texas Miracle. ■

What's at Stake in Texas' Courts?

By Lee Parsley, TLR General Counsel

We elect our judges in Texas. In fact, Texans elect a total of 1,914 judges, from 800 justices of the peace to nine Supreme Court justices.

It is incontrovertible that most voters—especially in our large-population counties—know little, if anything, about the candidates for judicial office.

In 2022, voters in Harris County will vote in 69 contested judicial elections. Even the most engaged voter will not have much knowledge about the 138 judicial candidates in Harris County. Even in counties where there are relatively few judicial races on the ballot, voters often are not well informed about the judicial candidates' qualifications for office.

In November 2018, Texans ejected from office sitting judges who collectively had seven centuries of judicial experience, purely on a partisan basis.

In other words, Texas is selecting its judges in a system that does not place qualifications for judicial office as the main factor in selection.

Even at the highest level of our judiciary, most voters do not know the qualifications of the candidates. Texas has two high courts—the Texas Supreme Court, which hears civil appeals, and the Court of Criminal Appeals, which hears criminal appeals. Among other things, the Court of Criminal Appeals reviews all criminal cases in which the death penalty is imposed. It hears cases in which a convicted person alleges that later-developed DNA evidence proves that he or she is innocent.

In 2018, the incumbent presiding judge on the Court of Criminal Appeals raised just shy of $6,000 for her reelection campaign. This judge—who literally makes life and death decisions—cannot possibly communicate with 16 million registered voters with this level of funding. She and the majority of her colleagues exist in near anonymity.

The intermediate appellate court judges are in a similar position. They have large districts with millions of potential voters, with no visibility. They, too, make critical decisions. And in 98 percent of the cases appealed to them, they make the final decision, because the two high courts collectively review approximately 200 cases per year, whereas our intermediate appellate courts receive and hear about 10 thousand civil and criminal appeals per year.

It appears voters make their judicial election decisions based primarily on party affiliation. This regularly results in the complete turnover of the judiciary in some districts. Judges are rejected by voters for no reason other than that they belong to the political party that is out of favor with voters on a particular election day, regardless of the actual qualifications and record of a particular judicial candidate.

In November 2018, Texans ejected from office sitting judges who collectively had *seven centuries* of judicial experience, just because they were Republicans.

The sweeps—whether sweeping Democrats or Republicans into office—often bring inexperienced judges to the bench, some of whom turn out to be stringently partisan, while others prove to be unproductive or temperamentally unsuited for the job. The sweeps discourage competent lawyers from seeking judicial positions and dishearten the judiciary as a whole.

For these reasons, TLR has long advocated for changing from an elected judiciary to an appointed one.

In 2020, we made a presentation to the judicial selection commission established by the Legislature, where we proposed the appointment of judges by the governor for a term of 12 years, with review of the governor's nominees by an impartial citizens committee, the advice and consent of the Senate, and a confirmation election by the voters. In doing so, we sought to facilitate a meaningful conversation by putting a specific proposal on the table—a proposal that emphasizes experience and qualifications for individuals serving in our judiciary.

Why does all this matter?

Every day, Texas judges make decisions that affect our lives, liberty, property and prosperity.

Anyone paying attention to Houston news is aware of the overall surge in crime and, more concerning, the numerous murders and violent crimes committed by accused criminals who were set free by the county's trial judges.

According to Harris County District Attorney Kim Ogg, a Democrat: "When you have murderers running around on multiple bonds, people who have killed other people, who go back and kill the witnesses … it's a scary time, and I'm here to warn people: we don't have to live like this."

Civil matters—which are little publicized, but critical to the work we do at TLR—are experiencing some disastrously bad judging, too.

More and more often, we are seeing enormous judgments in cases that don't warrant the amounts of money being awarded.

In one case out of a Harris County district court, a person riding a bicycle crashed into the back of a parked truck that was delivering landscaping supplies to a job site. Sadly, the bicyclist was killed. But how on earth was this accident the landscaping company's fault?

The trial judge refused to allow the landscaping company to introduce evidence that the truck was legally parked. But he did let the plaintiff present hearsay testimony that the truck had stopped short. In this case, in which there should have been no liability, there was, instead, a judgment for $27 million.

In a trial court in East Texas, an 18-wheeler and pickup truck were involved in a fender-bender. The driver of the pickup showed no signs of injury and told the investigating officer that he was unhurt. His pickup was operational and he continued his journey to a church event.

The next day, this fellow appeared at the ER complaining of neck pain. An X-ray did not show an injury. Nevertheless, his father told him to call a local lawyer. The lawyer referred him to a chiropractor, who referred him to a pain-management doctor, who referred him to a surgeon.

In the lawsuit that followed, the judge allowed the plaintiff lawyer to focus the case on a claim that the trucking company had destroyed relevant evidence during the time before the lawsuit was filed, when it had no reason to expect a fender-bender would result in a lawsuit. The trial—in which we think the judge allowed prejudicial, irrelevant evidence—resulted in a judgment of $32 million. The seasoned judges on the Tyler court of appeals reversed the judgment, essentially finding the amount of damages unfathomable and the plaintiff lawyer's conduct unjustifiable.

> ***"When you have murderers running around on multiple bonds, people who have killed other people, who go back and kill the witnesses… it's a scary time, and I'm here to warn people: we don't have to live like this."***
>
> **–HARRIS COUNTY DISTRICT ATTORNEY KIM OGG (D)**

A Dallas trial court was presented a case in which a Lexus sedan that was stopped in traffic on a highway *was hit from behind by another car.* Two children riding in car seats in the back of the Lexus sustained head injuries. The plaintiff lawyer's theory was that the front seats collapsed backward at the exact moment the children's heads were moving forward, resulting in the children's heads hitting the seat backs.

As evidence that the front seats of the car collapsed backward, the judge allowed the plaintiff to present evidence about alleged "unintended acceleration" events occurring in Toyota-made vehicles, which had nothing to do with the Lexus involved in the accident. He also allowed the plaintiff lawyer to show a *60 Minutes* report about automobile seat back failures that was broadcast in 1992 and related to other brands of cars that were 25 years older than the Lexus. In other words, he allowed highly prejudicial evidence any reasonable person would consider wholly irrelevant.

The judge entered a judgment for $208 million, which the Dallas court of appeals affirmed. Two out of the three judges on the panel that heard the appeal had been recently elected in a partisan sweep.

What is the solution for bad judging?

Bad judging in the criminal context is literally putting Texans' lives at risk, as violent criminals are allowed to return to the streets. Bad judging in the civil context is putting Texas' economy at risk, as job creators and professionals must now wonder whether Texas is returning to the days of "jackpot justice."

Until we establish a more rational system for selecting judges, there is only one solution: *voters must take the reins themselves*. Collectively, we must figure out how to elect the best candidates to judicial positions. This is not an easy assignment, but it is one that we must accept. We have no other choice. ■

Welcoming New TLR Teammates

By Mary Tipps, TLR Executive Director

The TLR team is proud to announce the addition of three new members who bring a breadth of knowledge and skill to our advocacy efforts at the Capitol and beyond.

Emerson Kirksey Hankamer has joined the TLRPAC Board. Emerson is a sixth-generation Texan, born and raised in Houston. He is CEO and part owner of Vacations To Go Inc., which sells cruises and international travel packages to more than a million customers a year in over 150 countries around the world. In 2019, the company employed more than 850 people and had over $1 billion in sales.

Emerson Kirksey Hankamer

Emerson received a bachelor's degree in Latin American studies from The University of Texas at Austin and attended the University of Guanajuato, in Guanajuato, Mexico, as well as the Salzburg Language Institute in Austria and the Klartext German Language Institute in Munich, Germany. He is fluent in Spanish and proficient in German. Emerson serves as vice chairman of the Houston Chapter of the Young Presidents Organization, a trustee and executive board member of the Houston Region Business Coalition, a trustee of Episcopal High School and a member of the Texas Public Policy Foundation 1876 Society and the Liberty Leadership Council.

Eddie Lucio III

After serving eight terms representing Texas House District 38 in Cameron County, former state Rep. **Eddie Lucio III** has joined the TLR legal and lobby teams. You likely recognize Rep. Lucio—along with his father, Sen. Eddie Lucio Jr.—as a pragmatic legislator and advocate for keeping Texas' legal system fair and efficient throughout his time in the House.

Avery Martinez

During his tenure as a state representative, Lucio served on more than 15 substantive and procedural legislative committees that exercised jurisdiction over various state agencies and areas of public policy. He also served as chairman of the Texas House Environmental Regulation Budget and Oversight Subcommittee, House Rules and Resolutions Committee and House Insurance Committee, and vice chair of the House Calendars Committee. He was instrumental in the creation of The University of Texas Rio Grande Valley and authored legislation to empower foster children by giving them a voice in their placement. He fought to secure passage and funding of the State Water Plan, and worked to ensure coastal homeowners would not be negatively affected by excessive rate increases from the Texas Windstorm Insurance Association. He also played a key role in passage of legislation to prevent surprise medical billing by out-of-network providers. In last year's legislative session, Eddie played a key role in passing TLR's priority bill (HB 19) to address abuses in commercial vehicle litigation.

Rep. Lucio received a Bachelor of Business Administration and law degree from The University of Texas at Austin. In addition to his law practice, Rep. Lucio is a small business owner. He became a franchise owner for Orangetheory Fitness in 2017, with locations in Brownsville and Harlingen, and recently became a franchise owner of Romeo's Pizza, with locations in Central Texas.

Finally, we are excited by the addition of **Avery Martinez**, who serves as administrative manager in our Austin office. Avery is a fifth-generation Austinite and former Capitol staffer. She began her career in the Texas Senate in 2019, working as a policy analyst during the 86th and 87th Legislative sessions. Avery joined TLR in March 2022, following her time working on Eva Guzman's campaign in the Republican Primary for Texas attorney general. She received a bachelor's degree in political science from Texas Tech University.

Please join us in welcoming these newest members to the TLR team! ■

Political Alignment and Philosophical Divide

By William Large, President, Florida Justice Reform Institute

A funny thing happened on the way to Republican governance in Florida. The trial lawyers came with them.

In 1992, Republicans gained a share of control of the Florida Senate, and by 1996, full control of both chambers. Until then, trial lawyers had been stalwart financial allies of the Democrats, giving only limited amounts to Republicans.

And the Republicans who came into power were stalwart allies of the business community. By 1999, the Florida Legislature had passed a comprehensive tort reform bill that capped punitive damages, narrowed joint and several liability and eliminated vicarious liability, among a host of other provisions.

Recognizing this shift in power, the trial bar needed a new strategy. They found it, not by removing support from Democrats, but by directing new political contributions to sympathetic candidates in competitive Republican primaries.

In districts where voter registration heavily favored Republicans, rendering the General Election (and therefore the Democrat candidate) inconsequential, the trial bar got to work defeating business-backed candidates with candidates who favored the trial bar. These other Republicans were still "right" on conservative issues—pro-life, NRA endorsed, supportive of tax relief—with one exception: their unwavering loyalty to the trial bar.

The advent of term limits and effects of redistricting played into this new strategy. As new Republicans were elected, the trial bar doubled down and supported the new Republicans' ascent, whether into leadership or across the hall into the Senate, or both.

Once in leadership, those Republicans leveraged their positions to recruit, fund and promote more like-minded, ostensibly conservative Republicans with increasingly closer ties to the trial bar.

Over the course of the past two decades, this slow but sure *wolf-in-sheep's-clothing strategy* has served the trial bar well.

One legislator—who was known as a pragmatic, pro-life moderate in the House and had received recognition from the business community—won election to the Senate and became part of a new leadership group that favored the trial bar.

Another House member, an attorney who happened to be employed by a top personal injury firm and chaired the House Civil Justice Subcommittee, held two "Hurricane Irma insurance claims town halls" under her official legislative office. Her invited speakers were all trial lawyers.

In fact, after a mostly uninterrupted string of legislative victories, by the late 2010s, civil litigation reformers like me found themselves fighting off viable attempts to mandate prejudgment interest and repeal Florida's nonjoinder statute.

But don't take my word for it. The trial bar is more than proud to take credit. Take these excerpts from the November/December 2017 issue of the *Florida Justice Association Journal*:

- *"Our flagship bill – to require mandatory auto bodily injury liability insurance, get rid of the permanency threshold and the ten thousand dollar offset for PIP payments has already made major progress. It had only one committee assignment to get to the floor of the House..."*
- *"A few years ago almost any fast moving priority bill was guaranteed to be a bad one, and now it seems almost surrealistic to see one so favorable to the consumer being treated this way."*
- *"It just has to be said again that this is not an accident or just good fortune. The arc of Florida politics bends long, and what we are seeing now is the direct result of wisdom, work, and wealth that was invested into the success of candidates who fundamentally believe in upholding the constitution and our rights to access the courts."*

In more recent years, the Legislature has increasingly turned to authorizing new causes of action as enforcement mechanisms for novel grievances.

Long-standing Republican principles of fostering market competition and innovation by reducing regulatory burdens have been replaced with a new agenda of regulation through litigation, under the guise of less government and more personal freedom. And that's no accident—through no fault of our own.

William W. Large is a legal reform advocate and experienced attorney who led former Florida Gov. Jeb Bush's fight to reform medical liability rules to cap damage awards. Large is president of the Florida Justice Reform Institute. ■

Texas' Non-Economic Damage Cap in Medical Liability Cases is Under Fire

By Brian Jackson, General Counsel, Texas Alliance for Patient Access

A who's who of Texas' most prominent plaintiff's lawyers teamed up with Washington, D.C.'s Center for Constitutional Litigation to file *Winnett v. Frank*, *et al*, a class-action lawsuit in federal court challenging Texas' non-economic damage cap in medical liability cases. The case was tried before Judge Lee Yeakel in Austin on February 9. The Texas Alliance for Patient Access coordinated the cap defense for all defendants, as well as intervenors the Texas Hospital Association and Texas Attorney General's Office.

In 2003, the Texas Legislature passed—and voters approved—a $250,000 cap on non-economic damages for hard-to-quantify injuries such as pain and suffering and emotional distress. The total capped amount varies depending on the number and variety of defendants. Doctors, hospitals and nursing homes are each responsible for no more than $250,000 in non-economic damages. In most medical liability cases, both a doctor and hospital are sued. Therefore, a potential $500,000 non-economic recovery is in play.

The *Winnett* plaintiffs assert that because juries determine the amount of a plaintiff's damages, the cap deprives plaintiffs of the right for a jury to decide their cases as guaranteed by the 7th Amendment to the U.S. Constitution.

Our defense consisted of two arguments. First, the 7th Amendment does not apply to civil cases tried in state court under state law. Second, even if it did, the right to trial by jury is satisfied when evidence is presented to a jury, which then deliberates and returns a verdict based on its factual findings. The legal consequence of that verdict is a matter of law, which the Legislature has the authority to shape. In Texas jury trials, the jury renders a verdict, then the judge applies the law to those findings and signs a judgment. That process satisfies the plaintiff's right to a jury trial.

Statutes limiting liability are common and have consistently been enforced by the courts. To bust the cap, Judge Yeakel must conclude that state legislatures lack the authority to cap damages or reduce verdicts. This would also mean states could not adopt similar measures that negate or preempt jury verdicts, such as directed verdicts, judgments notwithstanding a jury verdict, joint and several liability or contributory negligence. Likewise, states would be prohibited from statutorily granting plaintiffs double or treble damages.

Loss of the cap would be devastating to patients, doctors, hospitals and nursing homes in Texas. The resulting increase in medical liability insurance premiums will slow or reverse Texas' gains in physicians per population and also reduce the already scarce funds available to care for the indigent and medically underserved. High-risk patients will have fewer options when seeking a physician, and more physicians will restrict their practices or relocate to higher-income areas with a better payer mix. Access to care will be most severely affected in South Texas, far West Texas, the Coastal Bend and along the border.

It will likely be several months before Judge Yeakel hands down his ruling in the *Winnett* case. Undoubtedly, the losing party will appeal to the U.S. Fifth Circuit.

We believe case law favors our legal position and are committed to defending the cap to the U.S. Supreme Court, if necessary. The *Winnett* case is a legal fight we must win. If we lose the cap, we will likely never get it back.

Brian Jackson is a partner with the Jackson & Carter law firm in Austin and general counsel to the Texas Alliance for Patient Access (TAPA), a statewide coalition of doctors, hospitals, nursing homes, charity clinics and physician liability carriers. It serves as the unified voice of the Texas healthcare community on medical liability matters. ■

TORT REFORM IMPROVES TEXANS' ACCESS TO CARE SINCE 2003

- **Texas has added 15,161 more physicians with in-state licenses than can be accounted for by population growth.**
- **122 Texas counties have seen a net gain in emergency medicine physicians since the passage of reforms in 2003. That includes 55 counties that previously had none.**
- **An additional 55 Texas counties have doubled their supply of ER doctors since the landmark reforms were passed.**

(Source: Texas Alliance for Patient Access)

Cause and Effect

By Eddie Lucio III, TLR Outside Counsel

Before TLR's engagement and footprint in the Legislature—and well before my time in the Texas House—the legislative standard was the creation of new causes of action. This trend led to the proliferation of lawsuits, which in many circumstances decimated the medical community and small businesses.

Case in point: the creation of the Deceptive Trade Practices Act (DTPA) in 1973. This bill created a cause of action for consumers to sue businesses that deceived them for actual and triple damages (punitive), and allowed for the recovery of attorneys' fees. On the surface, there is merit in protecting deceived consumers, but in practice the original legislation led to a proliferation of litigation, including some frivolous lawsuits, revealing major problems with the DTPA.

One can argue that the statute was drafted broadly so that a DTPA claim could easily be established and used in civil lawsuits that had *nothing* to do with protecting consumers from actual deception. In fact, it was a claim made in the famous *Texaco v. Pennzoil* case, a lawsuit between two of the largest oil companies on the planet. This is not how a consumer protection law should work.

One of TLR's first legislative initiatives in 1995 was to rein in DTPA claims and make it a true consumer-protection statute rather than an all-purpose litigation tool. For two decades since then, TLR has resisted and fought against the creation of broad new causes of action in Texas.

However, it's important to note that all causes of action are not problematic. As my colleagues and I crafted legislation, it was clear that sometimes a lawsuit was a better enforcement mechanism for a new law than creating a criminal offense or regulatory penalty. TLR understood and appreciated that.

In my experience, TLR focused on opposing legislation that created causes of action that were badly one sided, that specified an amount of damages that could be recovered on a per-violation basis (such as $100 per violation) or that otherwise opened the door for lawsuit abuse.

TLR's efforts to advocate for legislation that establishes the recovery of attorneys by both parties are important to the integrity of the civil justice system. TLR believes, and I agree, that if a right to recover attorney fees is created, it should be reciprocal, with the loser paying the winner's attorney fees and court costs.

TLR has expressed ongoing concern about the standards created for recovering money damages. For example, under the initial version of the DTPA, a defendant could be held liable for triple damages regardless of the defendant's intent. There was no requirement that the defendant act with ill will, or even knowingly. Until TLR's 1995 reforms, the standards for recovery were simply too permissive, resulting in an expansive use of the DTPA and unjust results in many cases.

Finally, TLR often opposes proposed laws that create a right to recover exemplary (punitive) damages for relatively common actions. TLR's position is that if the Legislature creates a new ground to recover exemplary damages, the conduct being punished should *truly* deserve punishment and the limitations and procedures of the existing exemplary damages statutes must apply.

Despite the decades-long trend away from expansive causes of action, the tide has turned. In recent legislative sessions, an unusually high number of bills have been filed creating a new cause of action, many of which have low standards for recovery, the ability to recover damages as punishment for common or innocent mistakes, and that provide for a one-way award of attorney fees. Historically, TLR has opposed many of these bills and worked with authors to improve many others.

The 2023 legislative session is less than a year away, and we can likely expect to see this trend continue. We need to stay vigilant for problematic causes of action and advocate that any new causes of action have meaningful standards and avoid creating incentives for lawyers to pursue unwarranted lawsuits. ■

The Public Nuisance Doctrine

The concept of a "public nuisance" goes back to old English criminal laws making it, for example, a crime to obstruct the king's highway. In its most traditional sense, a public nuisance is a criminal act. It is an act, or failure to act, that obstructs, damages or inconveniences the rights of the community at large. The concept of a public nuisance can include a variety of acts that threaten the health, morals, safety, comfort, convenience or welfare of a community. A public nuisance interferes with the public at large, not merely one person or a group of persons. In most instances, the appropriate remedy for a public nuisance is to abate the cause of the nuisance.

A public nuisance is distinguishable from a private nuisance, which is a tort (a civil wrong that causes injury to another person or to another person's property). A private nuisance is the unreasonable, unwarranted or unlawful use of one's property in a manner that substantially interferes with the use and enjoyment of another person's property, without an actual physical invasion of that other person's property.

Unfortunately, the historical limitations on public nuisances have been relaxed in recent years. The doctrine has become a legal theory that can give rise to a civil lawsuit and a judgment for damages. And the plaintiff's bar and activist attorneys general, city attorneys and district attorneys have discovered a new use for public nuisance—implementing public policy changes through court decisions rather than through the legislative process.

These public nuisance lawsuits assert that certain activities and products have harmed society and thus are a public nuisance. For example, companies engaged in the production of oil and gas are being sued for allegedly causing climate change. The public entities bringing these lawsuits have typically retained private personal injury lawyers, promising the lawyers a large cut of what is hoped will be enormous windfalls. They hope the judgments will be so substantial that oil and gas companies will stop production of lawful and societally beneficial products. It is regulation by litigation.

In one mind-boggling recent example, the city attorney in Milwaukee was considering bringing a public nuisance lawsuit against car manufacturers because their vehicles are, allegedly, too easy to steal. Young criminals have created an auto-theft crime wave in Milwaukee. They are arrested, but then quickly released. The city attorney is blaming the auto manufacturers for the actions of these criminals and threatening public nuisance lawsuits, rather than addressing the root cause of vehicular thefts in that community.

In its current form, the public nuisance doctrine has limitless uses. Any form of human activity is subject to regulation through a public nuisance lawsuit. TLR believes the public nuisance doctrine should be returned to its historical domain, rather than becoming a catch-all cause of action used to impose one person's political views on society as a whole. During the 2021 legislative session, we supported passage of HB 2144 by **Rep. Cody Harris (R—Palestine)**, which would have dramatically limited the use of public nuisance lawsuits in Texas. We anticipate a similar bill will be filed again in 2023, and we expect to support it.

There is nothing new about TLR's interest in issues like this. A major impetus of the creation of TLR nearly 30 years ago was to address problems created by the then-activist Texas Supreme Court, which for years was populated mostly by former personal injury trial lawyers. That court, legislating from the bench, created or expanded causes of action to produce results it deemed "just" or opportune, regardless of legal precedent or the plain words of applicable statutes.

We have come a long way since the days of jackpot justice in Texas. But the evolving use of the public nuisance doctrine in the Lone Star State proves that our work is never done. ■