The respected journal *Academic Radiology* recently published a revealing new study confirming what is widely known in legal and medical communities: that diagnoses by doctors commissioned by plaintiffs’ lawyers to conduct mass screenings in asbestos litigation are wrong almost all of the time. The purpose of the study was to determine if x-ray interpretations by physicians retained by plaintiffs’ attorneys would be confirmed by independent x-ray readers.

The authors of the study had access to 492 interpretive reports of radiographs made by doctors hired by plaintiffs’ attorneys. Six additional doctors were given the reports and radiographs, to make an independent interpretation of the x-rays. These doctors were “B readers,” certified in the reading and interpretation of x-rays. They were not told why they were being asked to make the interpretations, so as not to prejudice their work in any way.

The plaintiff-lawyer doctors had interpreted the radiographs as positive for parenchymal abnormalities—a reading consistent with exposure to asbestos—in 95.9% of the 492 cases. By contrast, the six independent doctors made positive readings in only 4.5% of the readings. In other words, doctors hired by plaintiffs’ attorneys found positive readings in only 4.5% of the 492 screened persons. Independent B readers, however, found abnormalities in only 22 out of the same 492 screened persons! This study, which is consistent with similar ones done by the Rand Institute and others, illustrates what United States Senator John Kyl has labeled, in plain language, as “fraud.”

The mass screenings produced by doctors hired by plaintiffs’ lawyers have caused tens of thousands of claims to be made on behalf of persons who are not sick, and who are not suffering from any asbestos-related illness. Many knowledgeable observers believe that only 10 to 15% of the asbestos claims on file today are for persons who actually have physical impairments that can be linked to asbestos. There are a few extremely affluent law firms—several located in Texas—which, according to Professor Deborah Hensler of Stanford Law School, “represent many people who currently have pleural plaques, but are not disabled.”

When a lawyer files a claim on behalf of a person who is not sick, and settles that claim at a time when the claimant does not have any discernable ailment, then the claimant is stuck with that compensation, often quite small. If the claimant later develops a real asbestos disease, he is barred from seeking additional compensation (unless he develops a malignancy).
Many knowledgeable observers believe that 85 to 95% of the asbestos claims on file today are for persons who have no illness or impairment.

Another problem is that when defendants are forced to pay out money to persons who are not ill or impaired, truly sick persons lose out, because the funds available for compensation are reduced by amounts paid to the non-sick. The situation is so outrageous that many plaintiff lawyers who represent only truly sick clients are speaking out. Steven Kazan has observed that asbestos litigation “has nothing to do with health anymore, and everything to do with lawyers taking advantage of economic opportunity.” Matthew Bergman has stated that “the genuinely sick and dying are often deprived of adequate compensation, as more and more funds are diverted into settlements of the non-impaired claims.”

The asbestos litigation crisis in America—and in Texas, which is home to perhaps as many as 40% of all asbestos claims—is huge, and rising. Through 2003, there have been over 700,000 claims filed—110,000 in 2003 alone. The cost of this litigation so far is over $70 billion, and estimates are that final costs will exceed $250 billion. Most of the payments made by defendants go to litigants’ lawyer fees and other transaction costs, leaving claimants with less than fifty percent of the total payout. There are an estimated 8,000 defendants being sued for asbestos related matters, including corporate giants such as Pfizer and Ford Motor Company, as well as small businesses, such as a foundry in East Texas which has had over sixty claims filed against it, although it does not believe any of the claimants were ever employed by it. There have also been over 70 asbestos-related bankruptcies by American companies, one cost of which has been the loss of more than 60,000 American jobs. Employees of bankrupt companies, even those who continue to be employed, often lose their health care and pension benefits. The time is long overdue for Texas to put a stop to these abuses.

Continued from front cover

The TLR proposal contains other provisions which would bring fairness and clarity to the litigation. When a person meets the medical criteria, he or she will be able to pursue a claim in court. If TLR supporters read nothing else, the e-mails, faxes and mail we send containing Legislative Alerts should be considered ‘must read’ communications,” said TLR President Dick Trabulsi.

“Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it’s the only thing that ever has.”

— Margaret Mead

Legislative Alerts Are Critical to Reform

Texans for Lawsuit Reform communicates on a regular basis with its supporters throughout Texas, sharing news articles of interest, research, and legislative plans. While many supporters read every word, some have told us that in the rush of daily life, there is just not enough time to digest all the information about lawsuit abuse—and solutions—that TLR regularly sends out.

“We work hard to keep our 12,000 supporters up to date on trends, new areas of litigation abuse, and political news. During the legislative sessions, we are constantly working to share the latest developments in committees, and on the floor of the House and Senate,” said Richard Weekley, TLR CEO and founder.

All of the information sent to supporters is relevant to our goal of restoring litigation to its appropriate role in our society, but the single most important communication we send is the Legislative Alert,” said TLR President Dick Trabulsi.

“Is it too much, too little, or just the right amount? Usually people tell me it is about right.”

“Time after time, we have found that it is the voice of the informed citizen that makes the difference when a bill is stuck in committee, when there are unwarranted delay tactics on the floor of either chamber, or when our opponents have tried to twist arms in the hallways of the State Capitol,” said Weekley.

TLR supporter communications have been credited in past legislative sessions with breaking logjams and moving critically needed bills to the floor of the House and Senate. “Although we do extensive research, employ a talented legislative and legal team, and present compelling evidence in hearings on the need for reform, it is often the voice of the constituent that tips the balance in favor of legislative reform,” he said.

“We are a grassroots army of letter writers,” declared Hoagland. “It is inspiring to witness the democratic process working when citizens make their wishes known to their elected officials. It is exactly the process our Founding Fathers envisioned and it remains today the most powerful single element for winning real reform,” he said.
Outrageous Legal Fees Overturned

Legal Abuse Corrected from Bench

One area of law that consistently attracts abusive practices is the appointment and payment of “guardians ad litem.” Often when there is a suit for personal injury, and one of the plaintiffs is a mentally incompetent person or a minor, the judge will appoint a lawyer to represent that person to make sure the lawsuit adequately deals with their interests, apart from, say, those of the minor’s parents. While the concept is basically sound, it is subject to abuse. Sometimes a judge will appoint a friend or political ally as ad litem counsel, rewarding the counsel significant, and sometimes largely unearned fees.

In a recent article by Mary Alice Robbins in Texas Lawyer, the reporter discusses an ad litem fee case decided by the San Antonio Court of Appeals (4th Circuit). Goodyear Dunlop Tires North America Ltd. vs. Gamez, et al. concerned trial judge Raul Vasquez’s award of almost $400,000 in ad litem fees to six Laredo attorneys, whom he had appointed as counsel for the children of migrant farm workers killed or injured in a van rollover in Arizona. The bills for the lawyers apparently included charges for sleeping, and for working more than 24 hours in a day. In a 3-0 decision, the Court of Appeals directed the trial judge to recalculate his award of fees to the attorneys, to conform to the appeals court’s decision. Justice Sarah Duncan wrote a concurring opinion “to express my shock and outrage at the billing practices exhibited in this case by these ad litems.” She went on to inquire, “How could any lawyer defend billing for more than 24 hours in a day... two to four hours to review a standard one page deposition notice... or five hours for sleeping?” The appellate court noted that one of the ad litem counsels did not even attend the settlement conference, “the very activity that was clearly within his guardian ad litem role.” One of the lawyers charged 65 hours for two associates, one of whom was unlicensed, to prepare for, telephonically attend, and summarize every deposition in the case at $150 per hour. Another attorney billed for an associate’s time preparing for and traveling to a deposition in McAllen that was cancelled, and not relevant to her minor client.

Fortunately, there were Texas judges on the appellate bench who noticed and were able to stop the abuse of discretion by a Texas trial judge and the six attorneys to whom he awarded outrageous fees in the Goodyear case. The Texas Supreme Court is currently considering proposed Rule 173, which will clarify a guardian ad litem’s role in civil suits for damages. According to Texas Lawyer, “The proposed rule would prohibit an ad litem from participating in discovery, court proceedings, or trial, except for mediation, unless ordered by the trial court to do so for ‘sufficient reasons shown.’” Texans For Lawsuit Reform will encourage the Supreme Court to adopt strong rules regulating the ad litem practice, to prevent the kinds of abuses revealed in the Goodyear case.

TLR’S ADMINISTRATIVE STAFF

Glenda Hovey and Kristie Vazquez work tirelessly, often behind the scenes, to make sure that Texans for Lawsuit Reform’s operations run smoothly. Glenda and Kristie, in our Houston office, manage a broad range of TLR logistic and support activities. They maintain the TLR website (tortreform.com) and computer data bases, are critical to our mail program, are responsible for corporate files, and work with our accountants and insurance agents. They also assist with the whole range of activities at TLR, especially with our communications to supporters and the public at large. Glenda and Kristie are dedicated, accomplished, and joyful people. “I love my job. It’s very challenging and keeps me hopping, but that’s why I love working at TLR,” observes Glenda. Kristie comments, “It is a pleasure to work with the TLR team, because they are very genuine and truly care about the people of Texas.” Glenda and Kristie are two important reasons why TLR is succeeding in its efforts to create a fair and balanced civil justice system in Texas.
For more than a decade, the Texas Supreme Court has been considered one of the best appellate courts in the nation. It is one of unquestioned integrity and competence, judicially conservative in the best sense of the term—fair, thoughtful, and careful to interpret the law, rather than make the law. In the last Advocate, we wrote of the retirement of Chief Justice Tom Phillips, and commended the leadership he provided the Court. Associate Justice Mike Schneider has been appointed to the federal bench, and has left the Supreme Court. Associate Justice Priscilla Owen has been nominated by President Bush to the United States Court of Appeals for the Fifth Circuit, and her nomination is pending in the U.S. Senate. Governor Perry has named Justice Wallace Jefferson as the new Chief Justice, and as of this writing, his choices of two new associate justices to fill the seats held by Wallace Jefferson and Mike Schneider have not been announced.

Even though our Supreme Court is in transition, each of the current justices is a serious and experienced jurist, so there is every reason to believe that the Texas Supreme Court will continue to be one of the most outstanding courts in the United States. Here we highlight three of those justices: The new Chief Justice, the most senior member of the Court, and its newest member.

THE COURT’S NEW CHIEF JUSTICE
Rick Perry and Wallace Jefferson made history when the Governor named Justice Jefferson as Chief Justice of the Texas Supreme Court, the first African American to serve in that position. Chief Justice Jefferson is a graduate of Michigan State University and the University of Texas Law School.

He had a distinguished career practicing appellate law in San Antonio, twice arguing before the United States Supreme Court, and twice prevailing. The youthful and charismatic Jefferson brings proven qualities that will make him a successful leader as Chief Justice: clarity of mind, broad knowledge of the law, respect for his colleagues, and a humility that engenders admiration from the other justices. The Houston Chronicle has observed that Jefferson places consistency above activism, and commended his statement that he and the Court have one goal: to correctly interpret the law. Chief Justice Jefferson will continue the tradition of honesty, intellectual vigor, and collegiality that marked the long tenure of his predecessor, former Chief Justice Tom Phillips.

THE COURT’S MOST SENIOR JUSTICE
Nathan Hecht was first elected to the Court in 1988. He is an honors graduate of Yale University and Southern Methodist School of Law, and was selected for a prestigious clerkship on the U.S. Court of Appeals for the District of Columbia Circuit.

Throughout his years on the Texas Supreme Court, Justice Hecht has provided intellectual leadership, focusing on restoring traditional legal values to the state’s jurisprudence. Additionally he served as the Court’s liaison to all committees involved in revising rules of practice, procedure, and administration in Texas courts, including the critically important Supreme Court rules implementing H.B. 4, the landmark 2003 reform legislation passed by the Legislature. Justice Hecht has enjoyed a reputation as a brilliant scholar through his long career as practicing attorney, trial judge, Court of Appeals justice, and a justice of our state’s highest court. As senior member, he will continue as a cornerstone of integrity and intellectualism of this great court. Justice Hecht’s service will provide essential continuity during the next few years, because so many new justices are joining the Court. All Texans should be grateful for Nathan Hecht’s ongoing service to the people of our state.

THE COURT’S NEWEST JUSTICE
Scott Brister is renowned for his intelligence and strong work ethic. He is a native of Waco, a summa cum laude graduate of Duke University, an honors graduate of Harvard Law School, and an experienced lawyer and jurist. Justice Brister clerked for Chief Justice Joe Greenhill of the Texas Supreme Court, practiced law in Houston, served on the district bench there for eleven years, and was Chief Justice of the 14th Court of Appeals before being appointed to the Supreme Court by Governor Perry last year, replacing retiring Justice Craig Enoch.

Justice Brister has a broad and inquisitive mind, is known to be fair and decisive, and is learned in the law; he is an energetic and collegial member of the Court. His experience as lawyer, trial judge and appellate justice will serve the Court well, as it continues to address difficult legal issues. Justice Brister is a candidate for re-election in November.
Overflow crowds attended two recent luncheons hosted by Texans for Lawsuit Reform, one honoring Rep. Dan Ellis in Livingston, and another honoring Rep. Robby Cook in LaGrange. Both legislators received TLR’s Lone Star Statesman Award for their crucial support of HB 4 during last year’s 2003 legislative session.

The Award Luncheon for Representative Dan Ellis was held in Livingston. Tony Bennett, Vice President of Governmental Affairs of Temple Inland and a TLR volunteer, traveled from Austin to assist in the presentation. Over 80 of Dan’s friends, supporters and family, including his lovely wife, Bea, joined TLR in congratulating him for service to District 18 and the people of Texas. TLR CEO Dick Weekley informed the audience of the work of TLR’s 12,000 volunteers in advocating a fair and balanced civil justice system. TLR President Dick Trabulsi spoke of Rep. Ellis’ contribution to the passage of HB 4.

A gathering of 120 of Representative Cook’s friends, neighbors and family, including his charming wife, Mary Kay, and his parents, Bob and Pat, met in LaGrange to show their appreciation for his dedication and efforts in working for tort reform. The Honorable Robert Saunders, former Member of the Texas House and longtime friend of Rep. Cook’s, was Master of Ceremonies. Dick Trabulsi spoke to the audience about HB 4’s success in improving the affordability and accessibility of health care to Rep. Cook’s constituents and all Texans.

Representatives Ellis and Cook’s personal strength and commitment contributed to the passage of this historic legislation, which dramatically improved our state’s medical liability and other civil justice laws.

These are only two of the many award ceremonies that TLR has held statewide this past year. All of these events have been successful, due to the overwhelming support by the Staff of each of the Legislators, and the whole TLR team. The purpose of the awards is to demonstrate to Legislators, in their home districts, that TLR appreciates their support of a fair and sensible justice system for Texans.