THE MULTIDISTRICT LITIGATION RULE allows pretrial consolidation of similar cases before one court. This procedure will greatly weaken the power of courts known as “judicial hellholes,” which will lose their ability to hold cases subject to the procedure. The process will also save money and allow for the systematic management of mass tort cases such as pharmaceutical and other product liability cases.

THE APPEAL BOND RULE implements the fifty percent of net worth ceiling (not to exceed $25 million) in place of current rules permitting a bond to be imposed equal to the amount of the judgment. This HB4 reform permits the appeal of huge judgments such as Pennzoil v. Texaco without threatening the litigant’s solvency. (Texaco in fact filed for Chapter 11 Bankruptcy to avoid the huge appeal bond required after receiving the now-famous multibillion dollar verdict.)

THE EVIDENCE RULE precludes juries from hearing about and being prejudiced by post-accident product improvements. This reform encourages manufacturers to improve the safety of products—without concern that a plaintiff’s lawyer
will argue that the improvements constitute an admission that prior designs were inherently dangerous or defective.

**The Draft Class Action Rule** comprehensively tightens up class action procedure in Texas and implements specific directives of the Legislature to impose tight limits on attorney fees. Courts will now be limited to hourly rates within a range—not contingent fees—and in class action “coupon settlements,” the lawyers are required to be paid in coupons in proportion to the recovery paid to class members with coupons. These improvements will limit class action abuses across the board and specifically discourage the filing of meritless, legal-fee driven, class actions.

**The Draft Offer of Settlement Rule** fills in numerous details to implement the legislation’s innovative process under which a litigant may be required to pay an opponent’s legal fees. The process describes the offer and settlement conditions under which a party must pay litigation costs to the side that made a settlement offer later proven to be superior to the final judgment.

**Asbestos Litigation Making Us Sick**

Reform Needed to Stop the Legal Pillage

By Brooke Leslie Rollins

Thousands of people are out of work. Entire companies have been shut down. The future of the American economy could well hang in the balance. Not from terrorism or war, shady accounting or corporate malfeasance. But from lawsuits. Specifically, some 250,000 lawsuits filed to date because of ties to asbestos and some illnesses. And although asbestos-linked cancer deaths have been declining since 1992, we are experiencing a rise in the number of lawsuits filed. A great many of the lawsuits today are filed against companies that never mined asbestos or made asbestos-related products. More shocking: a great many of those lawsuits are being filed on behalf of people who are not even sick. To date, more than $54 billion has been paid in damages. In the trial lawyer circuit, asbestos means one thing: money. And lots of it. That’s why it is estimated another 2.5 million lawsuits will be filed before the trial lawyers move on to their next target.

In the trial lawyer circuit, asbestos means one thing: money. And lots of it. That’s why it is estimated another 2.5 million lawsuits will be filed before the trial lawyers move on to their next target.
As a physician, I am always careful to make sure that my patients and their families have realistic expectations. When I admit someone to the hospital with a serious illness, I advise the family that treatment takes time—be patient. It takes time for medications to take effect, and it takes time for patients with serious illnesses to recover. No reasonable person would expect otherwise.

This is no less true for the Texas tort reforms of 2003 and their effect on medical malpractice insurance premiums. The reforms will work—but not overnight. There are a number of reasons why tort reforms will take time before they result in reduced indemnity losses.

First, between June and September of 2003, Texas trial lawyers filed lawsuits and claims against Texas physicians at a rate of nearly 300% higher than during same time period in 2002. These new cases were added to the many thousands of claims and lawsuits filed before June 2003. None of these new cases will be affected by tort reform. I believe that the frenzy to get lawsuits filed before the reforms became law on September 1, 2003, is an indication that Texas trial lawyers recognize that tort reform will be effective.

Second, claims and lawsuits normally take between two and three years to close. Cases filed before September 1, 2003, will need to be closed over the next two to three years under pre-tort reform law; however, defense and indemnity costs will be largely paid out of premiums collected after September 1, 2003. This makes it difficult for companies to offer immediate rate rollbacks.

Third, insurance premiums are based largely on past experience. Not only will it take time to close pre-tort reform lawsuits, but it will take even more time to receive and close post-tort reform cases which are only beginning to come in. It is, however, the experience with the post-September 2003 cases that will determine future premiums.

Each professional liability carrier has to assess premium rating on the basis of many variables, and no two carriers are alike. To date, some carriers have announced stabilization of rates; others indicate that they have filed for rate increases but at lower rates than without tort reform. Texas Medical Liability Trust, the largest provider of medical liability insurance in Texas, covers over 10,800 physicians or about 40% of the available market. In March 2003, TMLT announced that, if effective tort reform and the constitutional amendment (Prop 12) were passed, it would offer a significant premium rate reduction based on actuarial analysis and TDI recommendations. With the passage of Proposition 12, TMLT has made good its promise with a 12% rate rollback. This rollback will begin with premium renewals of January 1, 2004.

Some tort reform opponents have questioned the significance of a 12% rate reduction in light of a doubling of malpractice rates over the last several years. The fact is that these earlier rate increases were an effort by the carriers to catch up to the ever escalating claims’ losses that also doubled over the last four or five years. These escalating claims costs produced the malpractice crisis in the first place and they have been exacerbated by the recent unprecedented rush to the courthouse during the past summer. It is in this context that reasonable people need to understand the time lag that may be required between tort reform and premium reduction.

In that context TMLT’s rate decrease is a bold demonstration of its belief in tort reform and confidence that tort reform will be effective. At the same time, all responsible medical liability insurance carriers must adhere to proper insurance business practices, evaluate the actual results of tort reform on indemnity losses, and determine premiums appropriately.

The patient has received a powerful medication, but the recovery is going to take time and there is no way to rush the cure. I have no doubt about the ultimate outcome.

Howard Marcus, M.D.
General Internist, Austin Regional Clinic
Chairman, TMLT Board of Governors
Chairman, Texas Alliance for Patient Access
Greg Abbott
Attorney General of Texas

Greg Abbott brings a wealth of experience to the cause of restoring fairness and balance to the civil justice system in Texas. He has high intellect and sound judgment, unquestioned integrity, obvious courage, and proven determination. He serves our state, and our civil justice system, ably and energetically, and Texans are fortunate to have him in public life.

A native Texan, Attorney General Greg Abbott was born in Wichita Falls and raised in Duncanville. After graduating from the University of Texas with a B.B.A. in Finance in 1981, he received his law degree from Vanderbilt University in 1984. General Abbott; 45, was elected the 50th Attorney General of Texas in November of 2002. He brings a broad and distinguished background to the office of AG.

Abbott was appointed to the Texas Supreme Court by then-Governor George W. Bush in 1995. He previously served three years as a District Judge in the 129th District Court in Houston, where he was one of the most highly rated Harris County Judges. General Abbott was elected twice to the Texas Supreme Court, receiving more votes than any other candidate for statewide office in 1996 and over 60% of the vote in 1998. As a member of the Texas Supreme Court, General Abbott consistently applied the conservative judicial philosophy of restraint and strict construction.

A longtime advocate of tort reform, General Abbott says some of his Supreme Court rulings helped cement tort reform. He believes that the civil justice system is key to resolving disputes but that “what we’re all against is frivolous and abusive claims.” As part of the reforms to cure abuses, he supports certain reasonable limits on damage awards in certain civil cases, such as medical liability cases.

A legal scholar and outstanding jurist, General Abbott has been honored with numerous awards over the course of his tenure on the bench. The Texas Review of Law and Politics hailed him as “Jurist of the Year.” The Texas Association of Civil Trial and Appellate Specialists named Abbott “Trial Judge of the Year,” while the Texas Chapter of the American Board of Trial Advocates awarded Abbott “Appellate Judge of the Year.”

In addition to his experience as a judge and lawyer, General Abbott has served as an Adjunct Professor at the University of Texas Law School, where he taught Texas Constitutional Law. He also served on the Board of Directors for the Central Texas Chapter of the Goodwill Industries, served on the Governor’s Committee to Promote Adoption; served as VP for Legislative Affairs of Justice for All, Texas’ leading victim’s rights organization; and continues to serve on the Board of Trustees of the Texas Institute for Rehabilitation and Research Foundation.

He authored TLR’s first legislative agenda, most of which was enacted in 1995, and has served as general counsel to the group since its inception.

Hugh Rice Kelly

In 1994, Hugh Rice Kelly along with Dick Weeley, Leo Linbeck and Dick Trabulsi, founded Texans for Lawsuit Reform. He authored TLR’s first legislative agenda, most of which was enacted in 1995, and has served as general counsel to the group since its inception. He is also a member of TLR’s strategic planning group.

Kelly has been active in the past as a member of the boards of the national Civil Justice Reform Group and of the Institute for Legal Reform of the U.S. Chamber of Commerce. He is also the author of the chapter on Civil Justice Reform in a multi-volume business law treatise published by the West Group and the American Corporate Counsel Association.

Prior to his retirement in May 2003, Kelly was Executive Vice President, General Counsel and Corporate Secretary of Reliant Energy. He joined Houston Lighting & Power Company, corporate predecessor of Reliant, as Senior Vice President, General Counsel and Corporate Secretary in 1984. He assumed the same title at the parent company in 1985 and was promoted to Executive Vice President in 1996. Prior to joining HL&P, Kelly was a lawyer with the Houston firm of Baker & Botts, joining as an associate in 1972. He was elected partner in 1978.

Kelly was appointed by Chief Justice Tom Phillips to the merit selection of judges “Committee of 100” in 1988, and to a second merit selection committee headed by Tom Luce in the mid 90s. In the Luce Committee, he authored the compromise proposal that was adopted by a plurality of the Committee. He is also active in the Make Texas Proud Committee, the current merit selection effort founded by Justice Phillips in 2003.

A native of Houston, Kelly graduated from Rice University in 1965. Following service as an officer in the U.S. Army, he attended law school at the University of Texas, where he served as Editor in Chief of the Texas Law Review, graduating with high honors. He is a member of the Houston, Texas and American Bar Associations and is a fellow of the Houston and Texas Bar Foundations. Kelly has served as a board member and officer of numerous civic and charitable institutions in Houston. He and his wife Molly are the parents of two daughters.
Support of TLR is an investment in the future of our law, our economy and our society.