DECEMBER 2009

ADVOCATE

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

★ DECEMBER 2009 ★

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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 17,000 supporters is to make Texas the Beacon State for Civil Justice in America.

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A Voluntary Association

Leo Linbeck, Jr.

Alexis de Toqueville found much to admire in American society and political organization. He particularly lauded the "voluntary association" whereby citizens come together around a cause or an issue to impact public policy. I have engaged with Texans for Lawsuit Reform for fifteen years because I think it exemplifies the way citizens can involve themselves with elected officials on important issues of governance.

Richard John Neuhaus wrote: "Politics is free persons deliberating the question, how ought we to order our life together?" This expresses the foundation upon which TLR was created and why it continues. The civil justice system is an essential building block in creating the "order" to which Neuhaus refers. Ours is a representative democracy, in which "we the people" are sovereign. The Framers, when creating the Constitution, had as their central vision the principle that the government is to answer to the people, not the people to the government. That exceptional right imposes a *duty* on us to engage in politics and policy if we expect to maintain our liberty and to help form the answer to the question, "how ought we to order our life together?"

As TLR and its thousands of supporters prepare to engage in the next legislative session – which will be our ninth session – we are mindful of several core principles which guide our deliberations and activities:

The structure of American government is that the citizen is sovereign, not the state.

As a consequence, there is a duty of a free people to engage in politics and policy to give effect to our form of government in which powers are delegated with the consent of the governed.

When citizens do not engage in the deliberations forming public policy, there is a natural concentration of power in the "political class." It is up to the people to assert their voice.

When the people do not take part in the great questions concerning "how we order our life together," the result will be the creation of a feudal order in which the citizen becomes supplicant rather than sovereign. The distinction between supplicant and sovereign is profound.

TLR is a "voluntary association" committed to preserving the role of the citizen in our public policy deliberations. That is why we were formed, that is why we continue.

Leo Linbeck, Jr.
Senior Chairman

Rockin' Robin

WE MOURN THE DEATH OF ROBIN RATLIFF SHIVERS. To her high school friends, she was "Rockin' Robin" because she was the most vivacious person they knew. Robin lit whatever space she occupied, and she is deeply missed. When you were her dinner companion, her enthusiastic conversation would range from her boxing lessons to the recent music festival in Austin to the latest health care innovations in the Seton System to the current happenings in the Legislature.

Robin was the wife of longtime TLR PAC Board Member Alan "Bud" Shivers, Jr. To Bud, "she was an angel to me." Robin was a graceful, beautiful, dynamic woman, a delight to be with. She exuded an energy and a passion for life that was palpable. Robin and Bud were active for decades in every aspect of the Austin community and made a particular mark on health care. Robin loved music and musicians and was beloved by the dynamic Austin music community. She was actively engaged with the Sisters of Charity and they embraced her with love and joy.

Robin & Bud Shivers

TLR Senior Chairman Leo Linbeck, Jr., who knew Robin well and admired her, observed: "Robin was a woman of Faith whose behavior in life was formed by her Faith. Robin never looked upon her role on behalf of charities, causes, life challenges, or people as burdens but rather as an opportunity to serve and to personally grow by the Grace made known to her through her Faith."

Robin was a special woman married to an exceptional man. The TLR family is saddened by her death and grateful that we were illuminated by her brilliant light, which will forever shine in our hearts.

Weekley Speaks at SMU

TLR Chairman and CEO Richard Weekley delivered the prestigious William J. O'Neil Lecture at the Cox School of Business at Southern Methodist University in Dallas in October. Weekley's address, entitled "Changing Public Policy in Texas: How the 'Lawsuit Capitol of the World' Became a National Model for Tort Reform," recounted the history of TLR and identified keys to the organization's success in working with legislators to effectively change public policy. Weekley said committed volunteer leadership and a comprehensive plan to battle on all fronts – legal, legislative and political – is essential.

Tony Pederson, Professor and Belo Distinguished Chair in Journalism Southern Methodist University said the William O'Neil Lecture in Business Journalism is an ongoing presentation of key issues in business and journalism.

"Dick Weekley has been at the forefront of some of the major business and public policy issues in Texas for the last 20 years, and his presentation to our students and faculty provided an excellent and thought-provoking summary of what has been accomplished," Pederson said.

Excerpts from Weekley's lecture will be available at www.tortreform.com.

TLR Chairman Richard Weekley Speaking at SMU

A Matter of Ethics

By Richard J. Trabulsi, Jr., TLR President

Richard J. Trabulsi, Jr.

The "holy grail" for personal injury plaintiffs' lawyers is the contingency fees they charge their clients.

It is not unusual for an injured party to receive less than half of a settlement award or jury verdict, with more than half going to lawyer fees and the expenses of the lawsuit. Nevertheless, the Texas Trial Lawyers Association (TTLA) vigorously opposes reasonable restrictions on contingency fee contracts.

In the most recent legislative session, a few wealthy personal injury lawyers who specialize in asbestos-related lawsuits asked the Legislature to undermine traditional toxic tort causation standards that have evolved in Texas courts over the years. They claimed that the causation standards, as applied to mesothelioma lawsuits, would reduce the settlement or verdict values of those lawsuits, thereby working an injustice on the persons suffering from this disease. Mesothelioma is a terminal cancer that is often linked to asbestos exposure.

The TTLA produced no evidence showing that the Texas causation standards are, in fact, producing unfair settlements or jury verdicts to persons suffering from mesothelioma. But mesothelioma lawsuits do raise an interesting ethical question for the legal profession. The argument that plaintiff lawyers use to justify contingency fees is that in risky lawsuits, in which the outcome is uncertain, a contingency fee of 33% to 50% is appropriate because, if the plaintiff loses, the lawyer gets no fee at all.

Even if one stipulates, for purposes of discussion, that a percentage fee is appropriate in risky personal injury lawsuits, are large percentage fees fair and ethical in mesothelioma litigation?

The mesothelioma claimants routinely file claims with "litigation trusts," which have been established from special bankruptcy proceedings resulting from asbestos litigation (asbestos lawsuits have bankrupted over seventy American companies). These litigation trusts are controlled by the asbestos plaintiffs' lawyers, and little is required from a mesothelioma claimant to receive substantial payments from those litigation trusts. It violates a sense of fairness for a plaintiff's lawyer to receive a significant share of a claimant's recovery from these trusts, since the recovery requires little more than filling out forms.

In addition to claims against the bankruptcy trusts, the mesothelioma claimant typically sues scores of defendants (in fact, often as many as one hundred defendants are named in the petition). Many of the standard defendants settle, along well defined lines that have been established over decades of asbestos litigation. Most of the plaintiff pleadings in these lawsuits are cookie-cutter pleadings – repetitious, vague, long and generic (which itself raises ethical issues.) Because of the peculiar history of asbestos litigation, it is rare for a mesothelioma claimant not to get sizable settlements from several defendants – usually totaling at least one million dollars and often as much as five million dollars.

A mesothelioma claim against a solvent defendant rarely goes to trial. If it does, and even if the trial results in a verdict for the defendant, the plaintiff usually has a meaningful recovery because of settlements with other defendants and payments from bankruptcy trusts. In other words, once a plaintiff's attorney undertakes to represent a mesothelioma claimant, it is highly unlikely that his client will receive nothing and that the lawyer will receive no fee. Therefore, the "contingency" that is used to justify large percentage legal fees are not appropriate in mesothelioma litigation.

If the TTLA is concerned with the financial well-being of mesothelioma claimants and their families, why does it consider 33% to 50% contingency fees fair,

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Mike Hull

Contingency Fees, Barratry and Subrogation

By Mike Hull, TLR Counsel

Many Texans cherish freedom to contract and limited government. However, on occasion, discrete statutory regulation may be appropriate. How contingent fee contracts are formed, the terms of those contracts and even the payouts to the plaintiff lawyers who recover money for insurance companies through subrogation represent examples where regulation should be carefully studied and thoughtful proposals advanced for legislative consideration.

CONTINGENT FEE CONTRACTS

Why do the trial lawyers advertise so fiercely for new cases? Perhaps because their contingent fee interests are so large, often 40 percent or more of a client's recovery. With fees that high, an attorney doesn't have to prevail that often to have a lucrative law practice. The forty-percent contingent fee is so standard in personal injury cases that it has become the accepted norm, regardless of how simple or complex the case.

Trial lawyers may increase their percent of the take if a case must be tried or appealed. Hence, it is not uncommon for a client to recover less than half of the total settlement or judgment after paying for expenses and their attorney's contingent fee.

Some have suggested regulating attorney fees as a way of getting more dollars into the hands of the injured client; an argument sure to get a visceral, and contradictory, response from the trial lawyers.

The plaintiff's bar has steadfastly opposed any effort to regulate their contingency fee arrangements. They contend that contingent fee contracts are a judicial function, an expression of freedom of contract, a protected form of commercial free speech, and a power reserved to the state bar, not the legislature.

Trial lawyers contend that regulating contingent fees interferes with the common law decided by courts and juries and inserts a statute where discretion should govern.

Simply stated, they want their contingency fees decided by judges and by rules, and not by legislative edict. Ironically, the trial lawyers traditionally favor statute over common law when the end result benefits them.

For example, common law bars recovery if an injured party is even one percent responsible for his or her injuries. Yet, at the insistence of the trial bar, Texas passed a statute that overrides the common law and allows a plaintiff to recover even if he or she is up to 50 percent at fault.

Similarly, the common law does not automatically treble certain damages found by a jury. Yet, over and over again, the trial lawyers have favored legislation that automatically triples damages. They have done so in the fields of insurance, antitrust, consumer credit and deceptive trade practices.

The trial bar happily also supported legislation that, in consumer cases, lowers the causation standard. The change ignores hundreds of years of common law requiring proof that the act or omission in fact caused the injury and that the actor could anticipate the harm the conduct would cause.

Trial lawyers contend that regulating attorney fees interferes with freedom of contract.

Trial lawyers despise arbitration provisions except for their own contracts with clients, where they insert arbitration clauses so the public can't know of disputes with their clients over those contingent fee agreements.

The trial lawyers appear to define freedom to contract as freedom to sue. They seemingly only

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Covert Operations: The Texas Trial Lawyer Message Machine

By Sherry Sylvester, TLR Media Consultant

Sherry Sylvester

Texans support lawsuit reform. Polls routinely show that a majority of Democrats, Republicans and Independents believe the reforms passed in Texas have had a positive impact on the state and over half want more. Polls also show that Texans are suspicious of personal injury trial lawyers, believing they file too many meritless lawsuits.

Faced with this brick wall of opposition to their agenda, wealthy Texas trial lawyers and their allies have mobilized a sophisticated misinformation campaign conducted by organizations that appear to have no direct link to organized trial lawyer groups. Their mission is to push the trial lawyer agenda and undermine lawsuit reform.

Over the past several years, a pattern has emerged. A news story will appear, seemingly out of nowhere, alleging that lawsuit reform has not been effective in increasing the number of doctors in Texas. An official looking survey will be circulated suggesting that most Texas judges say they have almost never been confronted with a frivolous lawsuit in their courts. A television show will air about a tragic malpractice victim who has been denied their day in court because of tort reform.

TLR routinely refutes this kind of misinformation with facts gathered from our extensive legal research, as well as data and analysis from objective sources, including state courts, hospitals, doctors and government agencies. Our public statements and the research we use to expose these claims all bear our name – Texans for Lawsuit Reform. But the organizations and individuals we engage in these debates are never as easily identified. Virtually always, they are covert operators for trial lawyers. Masking their self-interest, they pose as objective advocates for the public good.

In both state and national media, these "advocacy groups," political front groups and pseudo-academic trial lawyer groups keep up a relentless assault on lawsuit reforms in Texas, camouflaging their funding sources and operating below the radar of public awareness.

THE "ADVOCACY" GROUPS

TLR's longtime critic, Texans for Public Justice (TPJ), continues to deny their link to trial lawyers even though an accidentally posted tax return revealed in 2006 that their major funders included wealthy asbestos lawyer, the late Fred Baron and John Eddie Williams, one of the "Tobacco 5" attorneys who received part of the estimated $3.3 billion dollar fee from the state. The fight over the multi-billion dollar fee, of which John Eddie Willliams was a part, ultimately led to the conviction of former Attorney General Dan Morales.[1] According to the Texas Secretary of State's office, TPJ is governed by a three-person board that includes a New Yorker who also heads one of the largest anti-tort reform groups in the country.[2]

Texans for Public Justice is almost always identified in the media as a non-partisan watchdog that tracks money in Texas politics.[3] They have gained the attention of the Texas press over the years for their reports analyzing campaign contributions in Texas, a tedious process that reporters rarely have the time or the resources to undertake. But TPJ's analysis is far from objective.

From the beginning, their annual reports on Texas campaign spending have obscured the size and scope of plaintiff lawyer contributions. Packaged as white papers, these "studies" repeatedly target individuals from business who make large campaign contributions. They also

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approve arbitration clauses (except in their own contracts) when those clauses prohibit arbitration unless approved by a lawyer. We can all guess how many of those forty-percent lawyers are advising their clients to sign arbitration agreements.

Trial lawyers contend that large contingency fees are required by the economies of plaintiffs' litigation practice.

In 2003, the legislature heard testimony on a bill that aimed to impose a sliding scale on attorney contingency fees in medical liability lawsuits. The trial lawyers opposed the measure, citing the economies of their practice.

The trial lawyers argued that they recovered no money in most of their cases, very little money in a small number of cases, and that they therefore needed the big percentages for the few cases where they hit the home run in order to supplement their losses in the rest of their cases. I always wondered about the clients in those "home run" cases, whether they were told the reasonableness of their forty percent fee was being calculated based, in part, on the eighty-plus percent of the cases where the lawyers were losing money. If they were told, how did they feel about supplementing the lawyer's practice?

The realities of the trial practice.

The realities of the litigation practice today have changed from decades ago. On the defense side I routinely negotiate my hourly rate. The clients I represent are sophisticated businesses who routinely negotiate all of their provider contracts, including their contracts with lawyers. But many personal injury clients, often hounded by ambulance chasers within hours of an accident, often have little or no experience in dealing with lawyers.

Fifty years ago, cases tended to be discrete; a given case differed from the next case, or the case after. So, the research done for one case often did not translate into the next matter. The experts in a given case weren't appropriate for the next one. The documents produced and reviewed by opposing legal counsel were relevant only to the case at hand.

Today, plaintiff's lawyers typically focus on a handful of similar cases. So, the literature, the people, the experts, the discovery and even the legal issues tend to be the same. This is especially true in toxic tort cases such as mesothelioma claims where the same plaintiff attorneys sue the same defendants (until the defendants are forced into litigation bankruptcy). Toxic tort cases routinely involve the same alleged injury, same liability facts, same witnesses, same questions, answers, exhibits and legal questions. Consequently, these cases result in a more predictable settlement with less effort. Most of the plaintiff's legal work has already been produced by the lawyer who spends hundreds of thousands of dollars in advertising, trolling for yet another similarly situated client.

> "Those who expect to reap the blessings of freedom, must…undergo the fatigues of supporting it."
>
> – Thomas Paine, The Crisis, 1777

Regulating attorney fees increases what the client takes home.

In 2003, the Texas legislature considered but rejected a sliding scale on attorney contingency fees in health care lawsuits. Decades earlier, California adopted such a measure along with a $250,000 non-economic damage cap.

A 2004 Rand Corp. study of the California cap on non-economic damages in medical liability lawsuits found that it cut payments to plaintiffs victorious at trial by thirty percent. However, after factoring in the reduced payout to the attorneys, the net reduction in payouts to plaintiffs was only fifteen percent. In other words, a cap on contingency fees puts more money in the pocket of the injured party.

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Contingency Fees, ***continued from page 6***

Ironically, when the trial lawyers complain about their clients getting less money today because of tort reform they never offer to cut their own fees from the standard 40 percent charge they traditionally impose.

CONTRACT FORMATION, ALSO KNOWN AS BARRATRY

Trial lawyers will routinely tell you that tort reform has ruined their business. Yet, every year, they collectively spend millions on phone book, billboard, TV, radio and internet advertisement. A recent study by the U.S. Chamber found that trial lawyers have increased spending on medical liability advertising from $3.8 million in 2004 to $62 million in 2008, a 1,400 percent increase.

It's the forty-percent contingent fee contracts that pay for their slick advertising and it's the lust for more business that cause some plaintiff's lawyers to illegally solicit injured persons and grieving family members within hours of an incident – the illegal practice known as barratry.

Lawmakers attempted to further limit this unseemly activity this past session by passing a measure *(HB 148 by Smith)* prohibiting attorneys (and chiropractors) from contacting an accident victim within thirty days of an injury producing event.

Within days of its effective date, the newly passed legislation was challenged by, guess who, a plaintiff attorney and a chiropractor. We don't know how the case will be resolved. What we do know is that the formation of attorney fee contracts is an issue that should be carefully studied during the interim period leading to the next legislative session.

ATTORNEY FEES IN THE CONTEXT OF SUBROGATION

When your health carrier, property or casualty carrier pays a benefit on your behalf, the carrier becomes the first-in-line creditor to recover damages from a legal claim against the person who caused the harm. This is known as subrogation.

Suppose you're the victim of an auto accident. Your injuries cause you to be hospitalized and you incur $100,000 in medical bills. You hire a forty-percent contingency fee lawyer to represent your interests.

Your health insurer pays your medical bills but then seeks full recovery of its subrogated loss. But that is not the full extent of your damages. Additionally, you're seeking recovery for lost wages, pain and suffering and uncompensated medical losses for deductibles, co-payment and non-covered services. Your attorney suggests you accept a $100,000 settlement. Who gets paid, when and how much?

Until recently, common law dictated that you should be made whole before the insurance carrier recovers any money to reimburse it for the payments it made on your behalf. This rule applied to all forms of subrogation rights. There was no clear rule governing what it means to be "made whole" since applying the test was somewhat subjective. Moreover, how the attorney was to be paid by the carrier was also unclear. This murkiness resulted in a negotiation between the client, the attorney and the carrier for recovery of their respective interests.

However, in 2007, in a case known as *Fortis,* the Texas Supreme Court addressed the delicate balance between the client, the attorney and the carrier. The Court ruled that contractual subrogation means "contract" and that if the contract so provides, then a carrier is entitled to be made whole with first monies, that is, before either the attorney or the client is paid anything from the recovery against the person who caused the harm.

Returning to our example, after Fortis, in the absence of a differing contractual agreement, the carrier will argue it need not pay the injured party's attorney anything since it never had a contract with the attorney. Conceivably, then, you could be forced to pay the full amount of the subrogation interest to the carrier, plus 40 percent to your attorney for collecting the recovery.

On the one hand, the *Fortis* decision should be applauded for recognizing the right and freedom to contract. On the other hand, this is another situation where freedom to contract can work an injustice and intervention by the legislature might be appropriate.

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criticize contributions to judges who deliver decisions trial lawyers don't like,[4] but TPJ has never reported the combined impact of plaintiff lawyer contributions or challenged any major trial lawyer contributor. This is true even though their most recent report acknowledged that trial lawyer contributions increased by 211% in the last election cycle, dwarfing the contributions of any other group.[5]

TPJ has often not bothered to be objective. In 2003, TPJ funneled campaign contributions to the forces that were working against the medical liability reforms included in Proposition 12[6]. In 2005, when John O'Quinn, a personal injury trial lawyer from Houston who is recently deceased, gave the largest single political campaign contribution in Texas history, $2.5 million, the "campaign finance watchdogs" did not even issue a statement.

"Our public statements and the research we use to expose these claims all bear our name – Texans for Lawsuit Reform. But the organizations and individuals we engage in these debates are never as easily identified. Virtually always, they are covert operators for trial lawyers."

When asked about the omission, TPJ Executive Director Craig McDonald told the *Austin American-Statesman* that he did not "begrudge Mr. O'Quinn from raising money to help the Democratic ticket. It is woefully underfunded compared to the special-interest money Gov. Perry has raised. . . . I'm not outraged."[7]

TPJ has long supported a perennially introduced campaign finance reform bill that would restrict campaign contributions from corporations and labor unions. If the bill passed, almost all the contributions of personal injury trial lawyers would remain unlimited.[8]

TLR authored an extensive report on TPJ in 2002 that is available at www.tortreform.com. [9]

Like TPJ, Texas Watch is another front group that bills itself as an independent and non-partisan consumer advocate group "fighting for Texas families." They collaborated with TPJ in 2003 to oppose Proposition 12 and their current objective is to reverse medical liability reforms. [10]

Names of Texas Watch financial backers are not available for public review, but according to reports filed with the Texas Secretary of State, their eight-member board includes both the senior communications director for the Texas Trial Lawyer Association (TTLA) and a member of the TTLA Board who also sits on the national trial lawyer advocacy group, the American Association of Justice (formally the American Trial Lawyer Association).

Texas Watch has been interviewed in the press over 400 times since Proposition 12. In their capacity as a "consumer watchdog," they are asked to comment on all kinds of insurance issues – home, auto, medical. Their response in virtually every instance is essentially the same – allow more lawsuits.

Texas Watch is frequently quoted in news reports that highlight an alleged victim of medical malpractice who can't find an attorney because of the caps on non-economic damages. It is not clear how Texas Watch gains access to the details of these individual cases. On several occasions, proponents of tort reform have asked to see records to independently determine whether it was tort reform or the lack of merit that doomed the case. In each instance they were rebuffed by Texas Watch who cited privacy concerns. So either the injured party shared the records with Texas Watch, so the records were not, in fact, private or Texas Watch was simply speculating about the contents of the records and did not know the facts.

Texas Watch aggressively lobbied the Legislature in the most recent legislative session to pass a bill that would have reversed the Texas Supreme Court's *Entergy* decision. Had the bill passed it would have reversed a decades old policy supporting workers' compensation and allowed trial lawyers to exploit third-party lawsuits against property owners. [11]

THE POLITICAL FRONT GROUPS

Wealthy trial lawyers contributed nearly $9 million[12] to contested Texas legislative campaigns in the last election cycle, more than any other single business or indus-

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Covert Operations, ***continued from page 8***

try. They funnel many of their campaign contributions through deceptively named political front groups so that the public will not be aware of the full extent of their involvement. The largest of these front groups is the Texas Democratic Trust, which contributed $4.1 million in the last election cycle. The Trust was established by Baron, the wealthy asbestos trial lawyer cited above[13]and is currently largely funded by his widow, Lisa and other wealthy trial lawyers, including John Eddie Williams.[14]

The Texas Democratic Trust contributes to other political action committees and provided over half the funding for the Texas Democratic Party in the last election cycle. (In all, trial lawyers contribute almost 90 percent of the funding for the Texas Democratic Party.)[15]

Another front group, Texans for Insurance Reform, is a multi-million dollar political action committee that receives 97 percent of its funding from trial lawyers.[16] One of their top contributors, San Antonio personal injury trial lawyer Mikal Watts, has been exposed urging a legal opponent to settle a case, claiming he had influence at the 13th Court of Appeals because of his generous campaign contributions.[17]

Watts almost exclusively funds two other deceptively named front groups – Vote Texas and the Good Government PAC. [18] [19]

In addition, First Tuesday, a political action committee targeting Houston candidates and the Texas Values in Action Coalition,[20] (TVAC) a group that works to elect North Texas candidates, are both funded largely by trial lawyer contributions. In the most recent election, First Tuesday received 93 percent of their contributions from trial lawyers[21] and TVAC received 98 percent from that group.[22]

The House Democratic Campaign Committee appears to be a standard partisan political action committee, but in fact over half of their contributions come from trial lawyers.[23]

By accepting contributions from one or more of these innocuously named front groups, a candidate can appear to have a broad base of support, rather than revealing that he or she is mostly backed by money from trial lawyers.

PSEUDO ACADEMIC AND RESEARCH GROUPS

Like their political counterparts who use deceptive names for their front groups, trial lawyer-backed "researchers" produce pseudo-academic "studies" that appear to bolster the trial lawyer argument.

In 2007, a report entitled "Straight from the Horse's Mouth: Judicial Observations of Jury Behavior and the Need for Tort Reform" was published in the *Baylor Law Review*. The report seemed to show that the majority of Texas judges reported no current or past problems with frivolous lawsuits in their courts. [24]

In a commentary in the *San Antonio Express-News,* TLR Attorney Lee Parsley exposed the anti-tort reform bias in the study, but also showed that even the spotty data indicated serious concerns about frivolous lawsuits among the judiciary that had been surveyed. Indeed, the report showed that "over half the judges surveyed said they had personally observed a frivolous lawsuit in their courtroom in the past four years."[25]

It should be noted that at Baylor Law School, which published the study, the Law Center and the Research and Technology Institute are named after two personal injury trial attorneys who were also part of the "Tobacco 5" – Walter Umphrey and John Eddie Williams, respectively, although those names are not included in the study's publication notes.[26]

"…these "advocacy groups," political front groups and pseudo-academic trial lawyers groups keep up a relentless assault on lawsuit reforms in Texas."

TLR conducts extensive legal and public policy research through the TLR Foundation. Our name is clearly attached to every study we publish.

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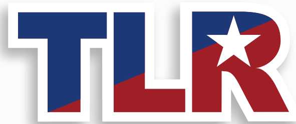
Texas House Speaker Joe Straus speaks to TLR supporters in Dallas. Also pictured TLR volunteer Rich Enthoven and TLR Chairman Dick Weekley.



Contingency Fees, *continued from page 7*

TLR did generally support in the past legislative session efforts to address the *Fortis* decision in the broader context of the issue of contingent attorney fees. The Texas Trial Lawyers Association also wanted to regulate the *Fortis* decision by statute. A rich irony of the past session on this issue was to hear the trial lawyers argue for freedom of contract in the context of their 40 percent contingent fee interest but rail against freedom of contract as to the recovery of subrogation interests.

Balancing the freedom to contract and limited government with the abuses or unfairness that can occur with contingent fee contracts should be carefully studied in the interim. Carefully crafted and limited statutory proposals to regulate fees, and to regulate the formation of contingent fee contracts, can be drafted and presented for legislative consideration. ■

A Matter of Ethics, *continued from page 3*

appropriate or ethical in mesothelioma litigation? By lowering their fees to reflect the near-certainty of receiving bankruptcy trust payments and standard settlements from solvent defendants, the mesothelioma plaintiffs' bar could substantially improve the financial recovery for their clients. Doing so would not necessarily require legislative action, government regulation, or a rule by the State Bar – it could be done merely by an act of will on the part of the plaintiffs' lawyers.

Richard J. Trabulsi, Jr.
President

Covert Operations, *continued from page 9*

PUBLIC POLICY DEBATE

TLR welcomes dialogue with all who want to challenge our ideas for improving Texas' civil justice system. We are committed to engaging in public policy debate because we are confident that our ideas will triumph, based on their merit. The business and community leaders, doctors and health care professionals, small business people, good government advocates and others who comprise the leadership and supporters of Texans for Lawsuit Reform are motivated by the belief that fair and honest courts are essential for a healthy business climate in Texas and the broadest access to health care. We believe the motivations of those who oppose us in this debate should also be transparent to the public.

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Around the State: Texas Legislators Honored with TLR PAC's Civil Justice Leadership Award

From Harlingen to Plano, Victoria to San Marcos, TLR PAC has had a busy fall acknowledging state legislators who exhibited strength and courage in standing up for civil justice reform during the recently concluded 81st legislative session.

TLR's Civil Justice Leadership Award was given to **Rep. Tara Rios Ybarra** (D - South Padre Island) at a luncheon in Harlingen co-hosted by the Rio Grande Valley Citizens Against Lawsuit Reform (CALA). On hand to help introduce Tara was Harlingen community leader Bob Shepard, a veteran member of TLR's Volunteer Speaker's Bureau. In honoring **Tara,** TLR PAC Chairman Dick Trabulsi said, "her commitment to a balanced and predictable civil justice system will help her district and all of Texas to continue as the State with the strongest economy in the nation." Rep. Rios Ybarra, as a dentist and small business woman, knows that a fair civil justice system encourages economic growth, job creation and access to health care providers, such as emergency room doctors.

TLR's Civil Justice Leadership Award Recipient, Rep. Tara Rios Ybarra

In Corpus Christi, TLR presented the Civil Justice Leadership Award to **Rep. Todd Hunter,** (R – Corpus Christi) Chairman of the House Jurisprudence and Civil Practices Committee. TLR volunteers Fred Heldenfels and Hugo Berlanga, old friends of **Rep. Hunter,** were the masters of ceremonies. A standing room only crowd gave Todd a standing ovation as he accepted the award, noting the hard fought battles won during the recent session. Trabulsi said Hunter's leadership was essential to stopping legislation that would have reversed lawsuit reforms or undermined well-decided appellate court decisions.

Mary Tipps, Rep. Jim Jackson and his wife, Sue Jackson, and TLR PAC Chairman, Richard Trabulsi

TLR Civil Justice Leadership Awards were also presented to **Rep. Patrick Rose** (D – Dripping Springs), **Rep. Jim Jackson** (R – Carrollton), **Rep. Jerry Madden** (R – Plano), **Sen. Tommy Williams** (R – The Woodlands), **Sen. Glenn Hegar** (R- Katy), and **Sen. Robert Nichols** (R- Jacksonville). TLR PAC has many other award ceremonies scheduled for the coming months to honor legislators who were instrumental in the successful 2009 legislative session. These outstanding legislators stand up for lawsuit reform in the face of intense pressure from personal injury trial lawyers. Their courage and commitment are critical to maintaining a fair and honest civil justice system in Texas.

1 "Trial Lawyers give $50,000 to 'neutral' watchdogs, Roddy Stinson, *San Antonio Express-News,* Nov. 5, 2006.

2 *Trial Magazine,* Interview with TPJ Board Member Joanne Doroshow, entitled, "Speaking Truth to Power: It may seem that trial lawyers are alone in the fight to protect the civil justice system from attack, but they're not, says this fellow veteran of the tort 'reform' wars." Doroshow is described as "the executive director of the Center for Justice and Democracy (CJ&D) a nonprofit organization with a self-described mission "to educate the public about the importance of the civil justice system and the dangers of so-called tort reforms." July, 2004.

3 According to a Lexis-Nexis search, Texans for Public Justice has been quoted 104 times in Texas papers in the past 12 months. They were described as a "watchdog group" 72 times.

4 TPJ's website includes 33 tags linking to their reports on Bob Perry, 17 tags linking to TLR, 9 tags linking to James Leininger and 29 tags linking to Texas Supreme Court Justice Priscilla Owen. (TPJ led the charge against Owen's appointment to the U.S. Fifth Circuit Court of Appeals.) There are no tags on their website indicating any reports on plaintiff lawyers.

5 "The plaintiff-lawyer-funded Texas Democratic Trust and Texas Democratic Party spent close to $6 million *apiece* in the 2008 cycle, increasing their collective spending 211 percent to become the two largest PACs in Texas." Texans for Public Justice Press Release, April 27, 2009.

6 "Campaign-funds watchdog donates to foes of Prop. 12," *Houston Chronicle,* Sept. 5, 2003. "Texans for Public Justice, which regularly issues reports critical of business and insurance special interest money, has given $ 19,100 to Texans Against Proposition 12, a political action committee."

7 *Austin American-Statesman,* Oct.10, 2006.

8 "Coalition to pursue campaign reforms; Group to push for more financing limits from 2005 Legislature," *Austin American-Statesman,* June 27, 2004.

9 "*Watchdog or Attack Dog: Texans for Public Justice, Not Texan, Not Public, Certainly Not Just,"* Texans for Lawsuit Reform, Spring 2003.

10 "Campaign-funds watchdog donates to foes of Prop. 12," *Houston Chronicle,* Sept. 5, 2003. "Texas Watch, a self-styled consumer action group, has given $41,500 to the same PAC [Texans Against Proposition 12], according to reports filed with the Texas Ethics Commission."

11 "Supreme Court sticking by workers comp ruling," *Dallas Morning News,* April 4, 2009.

12 Texas Ethics Commission 2008 campaign finance reports, Texans for Lawsuit Reform press release, Nov. 21, 2009.

13 "The Life of the Party," *Texas Lawyer,* Dec 25, 2006. Baron is named "Impact Player of the Year" for establishing the Texas Democratic Trust."

14 Texas Ethics Commission, Campaign Finance Reports.

15 Texas Ethics Commission 2008 campaign finance reports, Texans for Lawsuit Reform press release, Nov. 21, 2009.

16 Ibid.

17 "Candidate played up firm's link to justices," *Houston Chronicle,* Sept 5, 2007. "This court is comprised of six justices, all of whom are good Democrats," Watts wrote. "The Chief Justice, Hon. Rogelio Valdez, was recently elected with our firm's heavy support, and is a man who believes in the sanctity of jury verdicts."

18 "Pulled political ads result in FCC complaint," *Corpus Christi Caller-Times,* Oct. 23, 2008.

19 "Corpus Christi TV Stations Show Integrity against GOP ad," *Corpus Christi Caller-Times,* Sept 25, 2008.

20 "Funding group, GOP spar over DeLay charges," *Dallas Morning News,* Oct 4, 2005.

21 Texas Ethics Commission 2008 campaign finance reports, Texans for Lawsuit Reform press release, Nov. 21, 2009.

22 Ibid.

23 Ibid.

24 "Straight from the Horse's Mouth," Larry Lyon, Bradley J.B. Toben, James M. Underwood, William D. Underwood, James E. Wren, *Baylor Law Review*, Nov. 7, 2007.

25 "Civil justice study shows more reforms needed," *San Antonio Express-News,* Nov. 22, 2007. "No serious researcher would conclude that the study is scientifically valid, but even this imperfect data shows the opposite of what Kelly and Nobles assert."

26 From the Baylor University website: "The new home of Baylor Law School, the state-of-the-art Sheila and Walter Umphrey Law Center." "Welcome to the Sheridan & John Eddie Williams Legal Research and Technology Center. Our primary clientele consists of faculty and students of Baylor Law School."