

ADVOCATE

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

FEBRUARY 2015

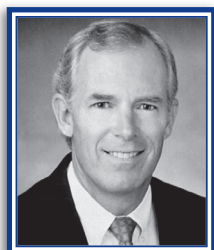
IN THIS ISSUE

- A Corruption of the Rule of Law 1
- U.S. Judge Reveals Pattern of Deception by Asbestos Plaintiff Lawyers 2 & 4
- Giants of Tort Reform Moving On 3

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.

A Corruption of the Rule of Law



In law as in life, there is right – and there is wrong.

Once again, the mass tort lawyers who travel the gold road of asbestos litigation have been revealed by a federal judge as manipulating litigation for self-enrichment, without regard for the integrity of our civil justice system.

Several years ago, U.S. District Judge Janis Jack discovered that many plaintiff asbestos and silica lawyers were “manufacturing lawsuits for money.” Last year, U.S. Bankruptcy Judge George Hodges found that certain plaintiff lawyers, including two notorious plaintiff firms in Texas, suppressed evidence in asbestos litigation by failing to honestly report their client’s full history of exposure to asbestos. Specifically, those lawyers would state one history of exposure in lawsuits against a solvent defendant but, separately, file claims with a different exposure history in seeking payments from the many bankruptcy trusts that have been established by certain companies to dispose of their liabilities in asbestos litigation.

If the rule of law is to prevail in our nation – if our litigation system is going to work as a fair and legitimate way to resolve disputes – then it is imperative that the rules and procedures governing lawsuits be transparent and designed to get to the truth.

Judge Hodges has shown what has long been suspected – there are asbestos plaintiff lawyers who deliberately conceal the true and full asbestos exposure history of their clients in lawsuits. Their pattern is to state one exposure history in a lawsuit that seeks to maximize the defendant’s role in causing their claimant’s illness, while stating a different exposure history in claims filed with various bankruptcy trusts – a history that, if revealed, would seriously diminish the defendant’s liability to the plaintiff.

This must stop. Once again, Texas has the opportunity to be a leader in resolving asbestos litigation abuses, just as we did a decade ago when our state passed comprehensive asbestos litigation reform – SB 15 has proven effective in eliminating bogus claims while allowing the truly sick to have their lawsuits resolved in a timely and efficient manner.

Our courts should be forums for the honest resolution of disputes, not a field of dreams in which mass tort lawyers play games to enrich themselves at the expense of the integrity of the rule of law.

Richard W. Weekley
Chairman & CEO

1701 Brun Street, Suite 200
Houston, Texas 77019

www.tortreform.com
tlr@tortreform.com

Leg. Ad. Pd. For by Texans
for Lawsuit Reform,
Richard J. Trabulsi, Jr.,

919 Congress Ave., Ste. 455
Austin, TX 78701

U.S. Judge Reveals Pattern of Deception by Asbestos Plaintiff Lawyers

U.S. Bankruptcy Judge George Hodges has exposed the practice of methodical evidence manipulation by certain asbestos plaintiff lawyers, including two Texas law firms. In a case styled *In Re Garlock Sealing Technologies, LLC* (hereinafter “*Garlock*”), the Judge found that Garlock Sealing Technologies, LLC (hereinafter “*Garlock*”) had shown that “its participation in the tort system was infected by the manipulation of exposure evidence by plaintiffs and their lawyers.” Judge Hodges stated that the plaintiff lawyers had engaged in a “startling pattern of misrepresentation...”

The pattern of misrepresentation by the plaintiff lawyers was essentially a shell game whereby the plaintiff lawyers, in lawsuits against *Garlock*, would claim that their clients were exposed to certain asbestos or asbestos-containing products while hiding their clients’ exposure to other, more-dangerous products. *Garlock* manufactured gaskets; asbestos was sealed within those gaskets. If a jury was not informed of all of the products in addition to *Garlock*’s gaskets to which a plaintiff had been exposed in his work history, the jury could not factually and accurately allocate the percentage that *Garlock*’s gaskets contributed to the plaintiff’s illness, thereby increasing *Garlock*’s potential liability.

About one hundred American companies, by filing bankruptcy, have created trusts to offload their asbestos-related liability (hereinafter “asbestos trusts”). When a person claims to have an illness related to asbestos exposure, he or she will file a lawsuit against solvent defendants *and* also file a claim with one or more of the asbestos trusts. The trusts are controlled by asbestos plaintiff lawyers. Filing a claim with an asbestos trust is a simple matter of submitting a form.

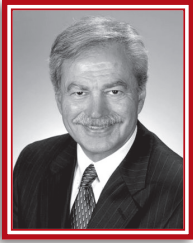
The *Garlock* case has revealed that certain plaintiff lawyers will file claims with asbestos trusts without informing a solvent defendant in a lawsuit. They do so either by filing a claim before trial and not revealing that claim to the defendant in the lawsuit, or they wait until after the trial against the solvent defendant to file claims with asbestos trusts. In the *Garlock* proceeding, Judge Hodges allowed discovery in fifteen lawsuits that had been pursued against *Garlock* and the evidence

revealed that in *each and every one* of them, plaintiff lawyers had hidden their clients’ true asbestos exposure histories from *Garlock*.

A few of Judge Hodges’ findings are summarized:

- A leading Texas plaintiffs’ firm published a 23-page set of instructions for their clients on how to testify when being deposed.
- It was a regular practice by plaintiffs’ firms to delay filing claims against asbestos trusts for their clients to prevent tort system defendants from having that information.
- In litigation against *Garlock*, on average plaintiff lawyers disclosed only about two exposures to bankrupt companies’ products, but after settling with *Garlock*, those lawyers made claims against about 19 such companies’ asbestos trusts.
- In one case, plaintiff lawyers argued to a jury that their client had no exposure to an asbestos product known as Unibestos insulation, but the same lawyers filed a claim with the trust set up by the company that manufactured Unibestos, stating that their client had been exposed to that product.
- In a separate case, plaintiff lawyers stated in written interrogatories in the lawsuit against solvent defendants that their client had “no personal knowledge” of exposure to any bankrupt companies’ asbestos product. But those lawyers also filed claims for their client with asbestos trusts, stating that their client had been exposed to 20 different asbestos products.
- In still another case, the plaintiff denied any exposure to insulation products, but after the case was settled, the plaintiff’s lawyers filed 11 asbestos trust claims for him. Seven of the plaintiff’s trust claims were based on declarations that he personally removed and replaced insulation; and he identified, by name, the insulation products to which he was exposed. Many insulation products contained the kind of asbestos fibers most associated with the deadly disease of mesothelioma.

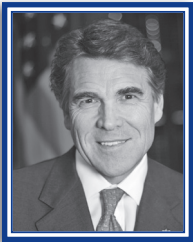
Continued on page 4



Giants of Tort Reform Moving On

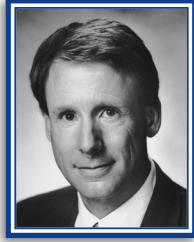
By Richard J. Trabulsi, Jr.
President of TLR

This is the start of the eleventh session in which TLR is advocating for a fair, balanced and predictable civil justice system. It is fitting to reflect on major contributors to Texas civil justice reform who won't be present in this year's legislative process. All Texans should be deeply grateful to these public servants for their roles in tort reform and their broader impact on Texas. I am.

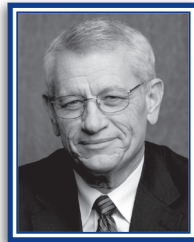


Rick Perry is the nation's greatest tort reform governor. With his active involvement, Texas passed HB 4, the most comprehensive civil justice reform in history. It has been a major contributor to Texas' spectacular job growth (the best in the nation for over a decade), the flow of thousands of new doctors to Texas and the expansion of quality health care throughout our state. There were additional notable reforms, including a much-needed cure to many of the rampant abuses in asbestos litigation and the establishment of a motion to dismiss practice in Texas, which introduces a "loser pays" rule designed to discourage non-meritorious lawsuits. In addition, Governor Perry has a stellar record of filling vacancies in the Texas judiciary with men and women of outstanding ability and integrity.

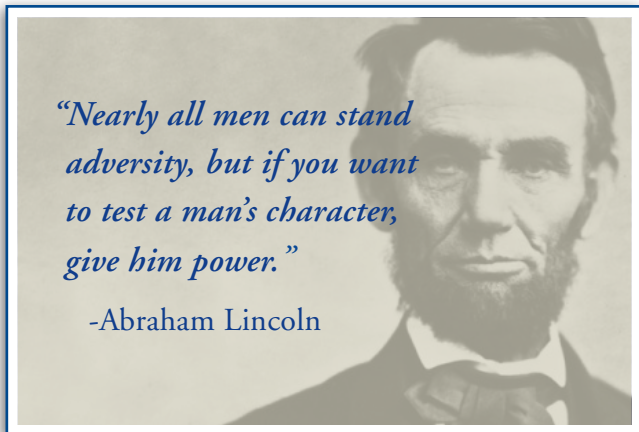
It is fair to say that none of the major tort reforms of the past decade would have become law without the active involvement of former lieutenant governor **David Dewhurst**, who intervened at critical times in the legislative process to make sure first, that the legislation was necessary, fair and reasonable, and second, to remove roadblocks that were obstructing passage of tort bills. In his typical methodical style, David drilled down on the details of each bill and was instrumental in making sure that the statutes were carefully drafted to meet the desired goals without undesired consequences.



Former state representative and senator **Bob Duncan** of Lubbock has been instrumental in tort reform from the very first session of TLR's involvement (1995), when he carried the venue reform bill in the House of Representatives. In recent years, Bob served as Chairman of the Senate State Affairs Committee, where most tort reform bills were considered. Because of Bob's ability and stature as lawyer and legislator, it would have been near impossible to pass tort reform bills without his approval.



Tryon Lewis served for two decades as a respected trial judge in Odessa before coming to the Texas House, from which he retired after six years of service. Last session, he was Chair of the House Judiciary and Civil Jurisprudence Committee. Tryon sets the standard for dedication, thoughtfulness, civility and integrity in a public official. During his tenure in the Legislature, he was instrumental in important civil justice reforms, including Governor Perry's Omnibus Tort Reform Bill of 2011. More importantly, Tryon was an exemplar of a servant-leader.



"Nearly all men can stand adversity, but if you want to test a man's character, give him power."

-Abraham Lincoln

The litigation abuse perpetrated by plaintiff lawyers against Garlock Sealing Technologies spurred Garlock to file lawsuits in a North Carolina federal court against four groups of personal injury trial lawyers, asserting claims for fraud and violations of the Racketeer Influenced and Corrupt Organizations (RICO) Act. Two of the groups of lawyers sued by Garlock are based in Texas – Waters & Kraus, LLP, and Simon Greenstone Panatier Bartlett, PC. In each of its complaints, Garlock asserts:

Defendants are well-organized and fully resourced asbestos personal injury law firms ... [that] have since at least 2000 engaged in a deliberate and ongoing scheme to defraud solvent manufacturers and distributors of asbestos-containing equipment and components. In particular, ... Defendants have conspired over a period of years to conceal evidence and misrepresent facts in order to maximize settlement offers by, and verdicts entered against, solvent defendants (the “Scheme”). The Scheme has allowed Defendants to maximize settlements and jury verdicts from solvent defendants in the tort system, while—sometimes simultaneously—taking full advantage of recovery available against insolvent manufacturers and distributors in the bankruptcy system. Garlock and its codefendants have been targets of this Scheme, which is ongoing.

It is notable that in 2010 and 2011, **Jeffrey Simon** (a named partner in the Simon Greenstone law firm) and **Charles Siegel** (a partner in the Waters & Krause law firm) both appeared in Texas legislative committee hearings and testified against bills requiring asbestos plaintiffs to disclose their trust claims to solvent defendants, asserting in part that legislation on the topic was unnecessary.

- For the fifteen plaintiffs represented by five plaintiff firms, including two Texas firms, here is the pattern of non-disclosure:

CASE	DISCLOSED EXPOSURES	NON-DISCLOSED EXPOSURES
1	2	22
2	7	25
3	3	23
4	6	19
5	2	22
6	1	14
7	0	11
8	5	11
9	0	25
10	0	20
11	1	23
12	3	26
13	1	25
14	1	14
15	0	4

- The five plaintiff firms engaged in a “startling pattern of misrepresentation.”
- While “it is not suppression of evidence for a plaintiff to be unable to identify exposures, it is suppression of evidence for a plaintiff to be unable to identify exposure in the tort case, but then later (and in some cases previously) to be able to identify it in Trust claims.”

Texas should not allow this kind of manipulation of evidence and degradation of our legal system.

“The great principles of right and wrong are legible to every reader: to pursue them requires not the aid of many counselors.”

– Thomas Jefferson