

# ADVOCATE

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

## OCTOBER 2016

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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 18,000 supporters is to make Texas the Beacon State for Civil Justice in America.

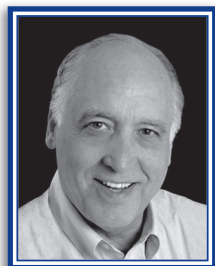
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## Texas' Leading Lawsuit Abuse



2016 has been a tumultuous year for severe weather in Texas, with storms dropping hailstones on communities across the state. Unfortunately, each hail event is seen by certain plaintiff trial lawyers as a gold mine to be exploited through a money-making scheme of soliciting property owners to file lawsuits against insurance carriers, alleging bogus or exaggerated damage claims.

The “hail cartel” of unscrupulous roofers, public adjusters and trial lawyers has filed thousands of unnecessary lawsuits that have spread from the Rio Grande Valley to every sector of our state. Since the end of the last legislative session – June 2015 – nearly 9,500 new hail lawsuits have been filed in counties across Texas. Perhaps you’ve seen the billboards and TV commercials soliciting clients for these lawsuits in your hometown.

The explosion in storm-related lawsuits must be viewed in context. Historically, only about one percent of property-damage insurance claims resulted in a lawsuit. Now, many hail events produce a lawsuit-to-claims ratio of 20 to 30 percent. The number of storm-related property insurance lawsuits filed in 2007 was 392, compared to 10,901 filed in 2014. That is an astounding 28-fold increase. Yet, during this period, there was not a corresponding uptick in consumer complaints filed with the Texas Department of Insurance.

No one disputes that hail causes damage, but certain trial lawyers have engaged in a mass-tort model in hail lawsuits – soliciting clients, exaggerating damages, failing to give notice to insurers before filing lawsuits – rather than trying to resolve claims in the normal process. These lawsuits are often filed years after the fact, and often throw in “kitchen sink” items having little relation to possible hail damage. These are gross abuses that undermine the true purpose of our civil justice system – to ensure that anyone not receiving proper recognition of their rights has proper redress in court.

Some think of the effects of this lawsuit abuse as part of a meaningless haze, having no impact on average families in Texas. However, anyone with a basic knowledge of business knows this is not true: insurance company losses translate in short order into higher premiums for all policy holders, bigger deductibles, and carriers exiting the market. Already, three Texas-based insurers have stopped writing policies in South Texas, leaving homeowners with fewer affordable options for property insurance. If we expect to have insurance available at a reasonable cost to cover storms and other catastrophes, we must put an end to profiteering off of our neighbors and our courts by mass tort lawyers.

This litigation problem isn’t going away without action from the Legislature. TLR looks forward to working with lawmakers next session to find a fair solution that protects property owners’ right to sue when necessary, while removing the incentive for plaintiff trial lawyers to manufacture lawsuits. ■

Hugh Rice Kelly  
Senior General Counsel

## Keeping Up the Fight Against Lawsuit Abuse, Today and in the Future

Texans for Lawsuit Reform was created over two decades ago to change the notoriously abusive legal environment that made Texas' civil justice system one of the least fair in the nation during the 1970s and 1980s. While our team has undergone infrequent but dynamic change over the years, our mission has remained constant – putting an end to lawsuit abuse in the Lone Star State.

As we once again prepare for an important election cycle and legislative session to continue to enhance the integrity of our legal system, we are excited to announce two meaningful changes to the TLR team.

**Lee Parsley**, formerly outside counsel to TLR, will be our general counsel. Lee is an appellate lawyer who has been an integral part of the TLR team for 14 years. His legal expertise played a key role in researching and developing the legislation for landmark tort reforms in Texas, including the comprehensive omnibus reform bill of 2003 that made Texas the nation's leader in tort reform. The following session, Lee was active in the passage of the bill reforming asbestos and silica litigation abuses. Senate Bill 15, which required an immense effort to research, craft and enact into law, has served as a model for other states trying to end one of the worst lawsuit abuses in American history.

Lee is a product of the Panhandle, having grown up on a cotton farm in Lubbock County. He obtained bachelor's and master's degrees in business from Texas Tech University, before attending law school at Texas Tech. During his career as a lawyer, Lee practiced in the litigation departments of two of Texas' largest law firms. He is also a former staff attorney at the Texas Supreme Court, former adjunct law professor at the University of Texas School of Law, and a former member of the Texas Board of Law Examiners.

TLR co-founder **Hugh Rice Kelly** has served for 22 years as our volunteer general counsel, and will now become TLR's senior general counsel. He will continue to be fully engaged with TLR as a director, legal advisor and chairman of the TLR Foundation. Hugh Rice, who has had an exemplary academic and professional career,

has been instrumental in the effort to right the ship of civil justice in Texas. His counsel and engagement will continue to be invaluable as we take on new battles in the years to come.

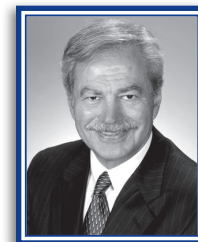


Lucy Nashed

**Lucy Nashed** has come on board as TLR's communications director. Lucy has nearly a decade of experience in Texas government and politics, working extensively on some of the most critical issues facing the Lone Star State, and seeing firsthand the benefits of a fair legal system on families and job creators. As press secretary for former Gov. Rick Perry and communications director for his 2015 presidential campaign, she played a key role in promoting successful policy initiatives, including Gov. Perry's signature economic development efforts and the passage of historic loser-pays tort reform in 2011.

After her time on the presidential campaign trail, Lucy served as communications director for the Texas Department of Agriculture, and most recently worked as a communications consultant for an innovative startup technology company. A native of Plano, Lucy received a bachelor's degree in public relations from The University of Texas at Austin.

Lucy replaces longtime TLR spokeswoman **Sherry Sylvester**, who has taken a new role as senior advisor to Texas Lt. Gov. Dan Patrick, who is a staunch supporter of TLR's efforts to stop lawsuit abuse and strengthen the Texas economy. Sherry's extensive expertise and background in communications, public policy and politics have been key to TLR's successful advocacy for lawsuit reform for the last decade. While we are sad to see Sherry leave the TLR team, we know she will be a wise advisor to Lt. Gov. Patrick. We are deeply grateful for her guidance and friendship over the years, and wish her the very best on her lifelong journey to impact public policy and improve civil society. ■



## The Team Behind the Mission

By Richard J. Trabulsi, Jr., TLR President

Michael Jordan observed, "talent wins games, but teamwork and intelligence win championships." We at TLR have a tremendous team of volunteer leaders, staff, consultants, lawyers and lobbyists who work effectively together for a common objective. Ours is serious business, but we have fun doing it because we are passionate about our goals and we respect and enjoy each other.

When TLR's chairman and founder, **Dick Weekley**, called the first meeting of his friends in the fall of 1993 to discuss the disturbing and dispiriting state of Texas' civil justice system, **Hugh Rice Kelly**, **Leo Linbeck Jr.** and I emerged as committed co-warriors with Dick to restore litigation in Texas to its appropriate role in society, and to bring common sense and fairness back to our courts. Sadly, Leo died a few years ago and we sorely miss his wise counsel.

Hugh Rice has volunteered as our general counsel for these many years. He now becomes senior general counsel and will continue his guiding roles with TLR and the TLR Foundation. Hugh Rice has a brilliant legal mind, unique and engaging writing style, breathtaking range of knowledge, and a wry wit that provides laughter among all of us at TLR. **Lee Parsley** will ably assume Hugh Rice's responsibilities as general counsel and will continue his role as lead counsel for TLR in legislative advocacy. There is no person who has contributed more to TLR's legislative success than Lee.

**Sherry Sylvester** has recently joined Lt. Gov. Dan Patrick's Capitol staff, after having served a decade as TLR's communications advisor. While I am pleased that she continues her career in public policy in this influential position, I will miss the frequency of my non-TLR conversations with Sherry about national politics, political philosophy, the books we read, and our shared love for the faith, teachings and rituals of our respective churches. **Lucy Nashed** has become TLR's communications director, and it is clear that her work ethic, commitment to conservative governance for our

state, as well as her intellect, experience and kind soul will make her an important and effective member of the TLR team.

While we are making these personnel transitions, we continue to benefit from the experienced and able leadership of our executive director, **Mary Tipps**, who is not only widely respected but truly beloved by legislators, Capitol staffers and her TLR colleagues for her dauntless good cheer and optimism, her careful attention to the needs of others, her integrity of character, and her sincere humility. Mary is unusually creative in expanding TLR's reach and communicating our goals and positions. **Drew Lawson** continues to serve as director of TLRPAC, bringing to his work a passion for conservative policies and principled political candidates, an analytical mind and shrewd political judgment, and a fierce will to win. Drew's compilation, analysis and dissemination of data are an important component of the electoral victories of TLR-supported candidates. **Sarah Talley** rounds out our Austin office, and her diligence and attention to detail are a daily asset. Her research on the costs and consequences of hailstorm lawsuit abuse on Texas homeowners highlights the need for statutory reform.

Our administrators in Houston, **Glenda Hovey** and **Kristie Vazquez**, make the various TLR operations run smoothly. This dynamic duo has been with TLR for 16 years. Having run or been involved in running several businesses in my career, I recognize and deeply value able and dedicated administrators like Glenda and Kristie.

The personal injury trial lawyer lobby is relentless in its efforts to take Texas back to the dark days of rampant lawsuit abuse. Protecting our critical lawsuit reforms and preventing and curing new lawsuit abuses is an ongoing fight. That is why we are expanding TLR's leadership team, including expanding the responsibilities of our regional chairmen and board members to help fund and lead our organization far into the future. ■



## ADA Litigation: Is California Coming to Texas?

By Lee Parsley, *TLR General Counsel*

Over the past decade, thousands of lawsuits have been filed in California against businesses alleging violations of the Americans with Disabilities Act (ADA). In fact, more ADA accessibility lawsuits have been filed in California than in the next four states combined. Unfortunately, at least one Texas-based plaintiff's lawyer appears poised to bring this California litigation model to Texas.

The ADA is a federal law prohibiting discrimination on the basis of disability in places of public accommodations. The ADA does not provide for the recovery of damages. Instead, ADA plaintiffs are limited to injunctive relief aimed at curing the violation. If successful in proving a violation, the plaintiff may be entitled to recover attorney fees and costs under the ADA.

In many states, including California and Texas, accessibility limitations may also violate state laws. California law provides that violators may be found liable for up to three times the amount of actual damages, but not less than \$4,000 *per violation per visit*, plus attorney's fees and costs. If a business has a parking space that is too small, a ramp that is not the proper angle, and a counter that is the wrong height, and the plaintiff visited the business three times, the *minimum* statutory damages are \$36,000. Mandatory minimum damages combined with attorney fees are irresistible to some plaintiff's lawyers. As a consequence, California leads the nation in ADA accessibility litigation abuse.

In Texas, the relevant statute is Chapter 21 of the Texas Human Resources Code. Unlike its California counterpart, the damages allowed under Chapter 21 – \$100 per violation – are not substantial. Although the Texas law does not provide for an award of attorneys' fees, combining a Texas state-law claim with a federal ADA claim allows for recovery of damages and attorney fees. Again, this combination of statutory damages plus attorney fees invites litigation.

One Austin-based attorney recently made news for filing hundreds of ADA lawsuits against local businesses for alleged

violations that are largely technical in nature. To date, he has filed over 375 lawsuits in one Texas federal court on behalf of a single plaintiff, and another 45 lawsuits on behalf of another plaintiff in a different federal court. These lawsuits all allege both ADA and Chapter 21 violations, allowing an award of both damages and fees to a prevailing plaintiff. After a suit is filed, the attorney typically demands payment of \$7,000 to resolve each case, but does not bother to ask the businesses to remedy the alleged violations.

The motive for these lawsuits is especially apparent when a business works to remedy the alleged violations, but the lawyer nevertheless pursues the litigation. In one instance, the lawyer sued a tenant in a building. When the owner of the property learned of the lawsuit, he immediately hired a contractor to ensure the property was in full compliance with the ADA. Astoundingly, the lawyer continued to pursue the lawsuit against the tenant, even though corrective action was quickly taken to comply with the ADA. The lawyer informed the business that it would be liable for up to \$50,000 in legal fees if it pursued the case through trial – a terrifying proposition for a small business whose annual profit is less than \$50,000. In another instance, the business was taking steps to make its premises more accessible at the time of the plaintiff's visit. The alleged violations had been remedied before the plaintiff filed the lawsuit, yet the attorney continued to pursue the litigation.

The ADA is an important safeguard for the millions of Americans living with disabilities, but its exploitation by unscrupulous trial lawyers in California has created a persistent and expensive pattern of lawsuit abuse that should not be allowed to take root in Texas. TLR continues to monitor and research this issue, and should it persist, is prepared to pursue a legislative remedy that supports access to places of public accommodations while removing the incentive for trial lawyers to manufacture lawsuits. ■

