After more than two decades of tort reforms enacted by the Texas Legislature, it is time to give increased attention to the organization and efficiency of the Texas court system. The TLR Foundation issued a comprehensive review of the Texas courts in a 2007 paper, Recommendations for Reform, The Texas Judicial System. That paper generated widespread interest, leading to the establishment of a State Bar of Texas Task Force on Court Administration, which issued an October 2008 report that made many recommendations to rationalize the Texas judicial system.

The Task Force Report refers to Alexander Hamilton’s Federalist No. 17: “The ordinary administration of criminal and civil justice...contributes, more than any other circumstance, to impressing upon the minds of the people affection, esteem, and reverence toward the government.”

Our civil courts must resolve disputes between our citizens when all other avenues of dispute resolution have failed. They must give effect to the policies enacted in statutes and assure that our administrative agencies fairly and rationally enforce regulations. Our criminal courts must protect the innocent and punish the guilty. To do these things in a manner that evokes the esteem and reverence of the citizenry, our bench must be occupied by competent and impartial judges. And court administration must be organized to avoid undue delay and unnecessary expense.

Texas has 14 intermediate courts of appeals—almost three times as many as more-populous California, which has five. Texas has one more intermediate appellate court than the number of intermediate appellate courts in the federal system, which covers 50 states and the District of Columbia.

Depending on the workload of any one of our state courts of appeals, cases are transferred from one court to another, meaning a trial court judgment in, say, Fort Worth that is appealed to the Fort Worth Court of Appeals might be transferred to and decided by the El Paso Court of Appeals. The state is also divided into 11 judicial administrative regions. These regions do not coincide with the courts of appeals’ districts or with district court districts. A district judge in Texas can have his decisions appealed to two different courts of appeals and be answerable to two different administrative officers.

At the trial level, we have both county courts at law and state district courts, whereas a rational system would have a unified trial bench to hear all matters of similar jurisdiction. To make matters worse, our partisan election of all judges results in periodic electoral sweeps that remove from office many experienced and highly qualified judges for no good reason.

TLR has proposals to rationalize our court system to make it more administratively efficient, to improve access to justice, and to have cases resolved in less time and with less expense. You can read about a few of those proposals in this Advocate.
A Fresh Start for the 86th Legislature

By Lilyanne McClean, TLR President

The 86th Legislative Session officially kicked off on January 8 with many new faces taking the oath of office, plenty of familiar ones returning to both chambers of the state legislature, and one notable change to the state’s “Big Three” leadership.

Gov. Greg Abbott and Lt. Gov. Dan Patrick—both staunch supporters of common-sense lawsuit reforms throughout their careers—continue their leadership of the state’s executive branch and Senate, respectively. They are joined by newly-elected House Speaker Dennis Bonnen, the former speaker pro tempore and longtime Republican representative from House District 25, covering Matagorda and part of Brazoria counties. His brother, Dr. Greg Bonnen, also serves in the Legislature and was the bill author of House Bill 1774 last session, which addressed lawsuit abuses by unscrupulous storm-chasing lawyers.

Speaker Bonnen emerged as speaker through the process established by the House Republican Caucus to nominate a person for the office who had broad support in the caucus. Speaker Bonnen also received early and substantial support from Democratic members of the House. He has advocated for a principled, conservative agenda, robust discussion and mutual respect in the Texas House. He has said repeatedly he will work for effective solutions to the demanding challenges we face in improving public education, alleviating our escalating property taxes and improving our infrastructure.

Speaker Bonnen brings a wealth of experience to the speakership. He was first elected to the Legislature in 1996 at the age of 24, and in addition to being speaker pro tempore, last session served as chairman of the House Ways and Means Committee, with policy oversight of all legislation relating to the state’s tax code. He is chairman of the board and CEO of Heritage Bank. Speaker Bonnen received a bachelor’s degree cum laude from St. Edward’s University. He and his wife, Kim, have two sons.

“We’re here today to send a very strong, profound and unequivocal message that the governor, lieutenant governor and speaker are working in collaboration together on a very bold agenda that will be transformative for the state of Texas.”


Speaker Bonnen Fast Facts

- **HOMETOWN:** ANGLETON, TX
- **NUMBER OF YEARS IN TEXAS HOUSE:** 22
- **OCCUPATION:** CHAIRMAN AND CEO, HERITAGE BANK
- **VOTES ELECTING AS SPEAKER:** 147 AYE, 0 NAY

---

Speaker Dennis Bonnen
Remembering Bob McNair and Bud Shivers

By Richard W. Weekley, TLR Senior Chairman

It is with gratitude that we celebrate the lives of two extraordinary men who were instrumental in TLR’s success over the past 25 years.

With the recent passing of Bob McNair at age 81, I lost a dear friend, TLR lost one of its strongest and most passionate supporters, and the state of Texas lost a patriot and a legend.

Bob had a long history with TLR, being one of our original board members and financial supporters and having contributed generously to our efforts in each of our 25 years. He and TLR’s co-founder, Leo Linbeck Jr., were instrumental in establishing TLR as a force in public policy.

Bob is best known for bringing professional football back to Houston as the owner and founder of the Houston Texans. To us at TLR, however, he was so much more. We knew him as a prolific philanthropist and a kind and thoughtful civic leader. His efforts to make Houston a better place to live touched the lives of millions. We also knew him as a savvy businessman who understood the importance of keeping our economy strong by keeping our legal system fair. Bob was always one of TLR’s biggest advocates.

One thing is for certain: Bob McNair was one of a kind.

He was an accomplished businessman, founding Cogen Technologies and serving as senior chairman of McNair Interests, Palmetto Partners and RCM Financial Services. For his contributions to the business world, he was inducted into the Texas Business Hall of Fame in 1997 and the Houston Hall of Fame in 2010.

The presence of the Texans in Houston has had a massive economic impact on the city, particularly as Houston has played host to two Super Bowls, thanks to Bob’s leadership.

As a philanthropist, Bob was focused on bettering his community, donating $500 million to scientific, literary, medical, educational and faith-based organizations.

Our deepest condolences go out to Bob’s wife, Janice, his sons Cal and Cary, his daughters Ruth and Melissa, his 15 grandchildren, and his two great-grandsons.

The TLR family will deeply miss Bob McNair and will always be inspired by his legacy of kindness, thoughtfulness, integrity, honesty, commitment, and deep dedication to his God, his family and his community.

And last month we lost Allan “Bud” Shivers Jr., who passed away at the age of 74. The son of former Texas Gov. Allan Shivers, Bud was an investor, a dedicated philanthropist and a civic leader whose impact on the city of Austin is unparalleled. He long served on the TLRPAC Board, and we found his counsel invariably informed, wise and concisely articulated.

Bud’s legacy of public service goes back to his time in the U.S. Coast Guard, when he suffered the debilitating injury that put him in a wheelchair. Bud lived life with zest, determination, grace and courage. He was widely accomplished.

Bud was founder and chairman of the Seton Fund, which was set up to support the hospital group that became the Seton Healthcare Family. He received its Dr. Walter E. Reifslager Jr. Award in 1995. He served on the board of the Headliners Foundation of Texas, Texas Association of Taxpayers and the Institute for Rehabilitation and Research. Bud also served as a trustee at St. Edward’s University and the University of St. Thomas in Houston.

Bud Shivers—a life well lived.

Robin and Allan “Bud” Shivers

Three things in life that are most valuable: love, friends and self-confidence.

Three things in life that make a good person: sincerity, hard work and compassion.
Faster, Fairer Resolutions

In too many cases, civil litigation costs too much, takes too long and creates too much risk. The rise of alternative dispute resolution mechanisms, like mediation and arbitration, correlates to the increased time, cost and risk of modern litigation. It is not that these alternative mechanisms for resolving disputes are bad. It is that their proliferation in recent years suggests that the existing dispute resolution system—litigation in the local courthouse—is losing its place in society because of its shortcomings.

There are many factors that drive the cost of litigation. When an attorney’s billing rate of $1,000 per hour is coupled with unlimited pretrial discovery, the expense quickly balloons. But even a more modest billing rate of $150 per hour can yield a large fee in today’s litigation. The ability of parties to plead multiple, largely redundant, causes of action and defenses also adds to expense, as both sides are forced to explore the factual and legal basis for every element of every pleading. The ease with which postponements are granted is a factor as well, because much of the time spent to prepare for a trial or hearing must be reinvested to prepare for a future trial or hearing on the same subject. These are only a few of the drivers of litigation cost.

TLR has worked for 25 years to address the risk side of the litigation equation. We have helped the state create a civil justice system that yields reasonably predictable results. For example, it is much harder to forum shop in Texas today than it was 25 years ago, and punitive damage awards are now reasonably limited, preventing the run-away awards of yesteryear. These and many other reforms have helped to eliminate jackpot justice in Texas, strengthening our economy and public trust in the courts.

To a lesser extent, we have also worked to address the cost of litigation. In 2011, for example, we supported Gov. Perry’s reform priorities, including a requirement that the Texas Supreme Court write rules to expedite the resolution of civil cases with less than $100,000 in controversy.

In the upcoming legislative session, we will focus again on mechanisms to provide better, more efficient access to the civil justice system for all Texans.

The only contact many people will ever have with the civil justice system is in a justice of the peace (JP) court, which handles civil cases with less than $10,000 in controversy. These courts use informal procedures and no lawyer is required. Because these courts are easily accessed and handle their caseloads very quickly, TLR will support increasing their maximum jurisdiction to $20,000.

Many of Texas’ larger counties have courts called county courts at law. They were designed to be a step between JP courts, which handle small civil cases, and district courts, which handle large civil cases. The maximum civil jurisdiction for most county courts at law is $200,000. TLR will support legislation to raise the standard maximum jurisdictional limit to $250,000.

As noted, the civil jurisdiction for most county courts at law is capped at $200,000, but there are a few counties in Texas (Dallas and Nueces counties, for example) whose county courts at law have unlimited civil jurisdiction. They can hear the same civil cases as the district courts in those counties. The difference is that the parties are entitled to a 12-person jury in district court, but only a six-person jury in a county court at law. Thus, a billion-dollar case can be tried to a six-person jury in some Texas counties.

Research shows that smaller juries yield more inconsistent and aberrational results, both high and low. TLR will support legislation this session, as we have in prior sessions, to allow any party to a case with more than $250,000 in controversy to demand that the case be presented to 12 jurors rather than six.

Following the 2011 legislative session, the Texas Supreme Court promulgated rules for expedited proceedings in civil cases with less than $100,000 in controversy.
Attorney Advertising
If you watch television, you see attorneys advertising for clients. Some of the advertisements focus on prescription drugs and medical devices, some on asbestos-caused cancer, some on automobile and truck-related accidents and some on workplace injuries. In many instances, the entity paying for the advertising is a client harvester that generates and sells clients to attorneys throughout the state or nation.

Research has proven that advertising for clients in the prescription drug arena alarms people who are using the drug in question. There are documented examples of people seeing attorney advertisements, becoming alarmed, stopping use of their prescription drug and suffering negative health consequences or even dying as a result.

TLR believes the Texas Legislature should address attorney advertising in the upcoming session. We believe an attorney's advertisement must disclose that it is a paid ad, the name of the sponsor of the ad, and whether the advertising law firm will actually represent the client. We believe attorneys should be prohibited from using the phrases “medical alert,” “health alert,” “consumer alert,” “public service announcement,” or similar terms. We believe advertising attorneys should be prohibited from saying a product has been recalled when it has not, and that prescription drug-related advertisements must advise against stopping use of the product without a physician's advice. And we believe the Texas attorney general and local prosecuting attorneys should be specifically authorized to seek an injunction and civil penalties when advertising attorneys violate these rules.

Third-Party Litigation Financing
A lucrative new lawsuit-related industry is operating throughout the U.S.—third-party litigation financing. The lenders in this market make loans to plaintiffs with the agreement that the loans will be repaid only if the plaintiff prevails in the lawsuit. Large hedge funds are providing much of the capital in commercial lawsuits, while other non-traditional lenders provide “crash cash” to ordinary consumers. The interest rates being charged, especially to ordinary consumers, are high.

Many knowledgeable commentators believe inserting contingent-fee lenders into the civil justice system increases the number of lawsuits and creates a barrier to settling cases. While we are not yet convinced that these lending agreements should be prohibited, we are convinced they should be disclosed to the judge and all parties. TLR will advocate requiring pre-trial disclosure of any financial arrangement in which a third-party provides contingent financing to any party to a lawsuit.

Attorney General Penalty Power
Texas' attorney general has the power to enforce the Deceptive Trade Practices Act (DTPA) by filing a lawsuit to prevent a company from engaging in misleading activities. The attorney general can also recover restitution on behalf of anyone who has been harmed by a company’s misleading actions and impose a penalty on the wrongdoer. Today, the penalty that may be imposed under the DTPA is $20,000 per violation, without regard to whether the wrongdoer acted intentionally or whether anyone was actually harmed by the wrongful conduct. At $20,000 per violation, that penalty can become enormous very quickly.

A penalty of this magnitude can be appropriate when a company is reaping mountains of money by intentionally misleading Texans. On the other hand, the mere threat of a $20,000-per-violation penalty can be tremendously intimidating to a company that acted innocently.

In the hands of a responsible attorney general—as we have had for almost two decades in Texas—this massive penalty power is used strategically to ensure Texans are not cheated by companies operating in the state. We believe the attorney general's current internal guidelines allow the assertion of the attorney general's full authority only in cases in which it is warranted. In other cases, the attorney general seeks to fit the punishment to the crime.

In the upcoming legislative session, TLR will work to modify the DTPA to codify the attorney general’s existing methodology of penalizing wrongdoers operating in Texas. For those who are intentionally stealing from Texans, the penalty power will remain fulsome. But those who have made an innocent mistake will not be subject to the threat of company-ending penalties. There is no doubt that current and past attorneys general have largely used the DTPA judiciously, but we are convinced that the massive power given to the attorney general by the DTPA to punish companies operating in Texas could be abused in the future and is not the right policy for Texas under any attorney general.

controversy, including attorney’s fees. Because attorney’s fees are included and often exceed the amount of damages sought in a small civil case, the $100,000 limitation has proven unduly restrictive. Consequently, we will advocate for increasing the limit to $250,000—excluding attorney's fees—to make an expedited case procedure available in more cases.

Finally, we believe the Legislature should provide funding for the Texas Supreme Court to implement pilot projects in select counties to identify ways to enhance access to justice for all litigants by controlling the cost and duration of certain kinds of civil litigation.

Third-Party Litigation Financing
A lucrative new lawsuit-related industry is operating throughout the U.S.—third-party litigation financing. The lenders in this market make loans to plaintiffs with the agreement that the loans will be repaid only if the plaintiff prevails in the lawsuit. Large hedge funds are providing much of the capital in commercial lawsuits, while other non-traditional lenders provide “crash cash” to ordinary consumers. The interest rates being charged, especially to ordinary consumers, are high.

Many knowledgeable commentators believe inserting contingent-fee lenders into the civil justice system increases the number of lawsuits and creates a barrier to settling cases. While we are not yet convinced that these lending agreements should be prohibited, we are convinced they should be disclosed to the judge and all parties. TLR will advocate requiring pre-trial disclosure of any financial arrangement in which a third-party provides contingent financing to any party to a lawsuit.
Sept. 1, 2018, marked the one-year anniversary of the enactment of House Bill (HB) 1774, the Texas Legislature’s effort to stop storm-chasing lawyers from taking advantage of property owners after natural disasters. After the explosion of unnecessary lawsuits against insurance companies following hail and wind events, property insurers in parts of the state were raising premiums and deductibles, and had even stopped offering coverage in some areas altogether. The Legislature acted in 2017 to shut down this obvious lawsuit abuse and stop storm-chasing lawyers from hijacking our property insurance premiums.

A review of lawsuit data prior to the bill’s enactment shows that during the four-and-a-half-year period from Jan. 1, 2014, through June 30, 2018, more than 34,600 weather-related lawsuits were filed in Texas—an average of 640 new lawsuits per month. Compare that to the six years before 2012, when fewer than 4,500 of these lawsuits were filed in Texas, an average of only 62 lawsuits per month.

TLR’s more recent data shows that weather-related lawsuit filing spiked in August 2017, the month before HB 1774 took effect, as storm-chasing lawyers dumped their inventory of heavily-solicited lawsuits into the court system. They filed 1,553 new weather-related lawsuits in that single month, and in more than 36 percent of those lawsuits, the plaintiff’s lawyer named an individual as a co-defendant with the insurance company to establish venue in a friendly court.

Since then, the number of lawsuits filed each month has dipped significantly, although we have begun to see a slight uptick in the number of lawsuits filed in the past few months. We are monitoring new filings closely, especially since a few of the storm-chasing law firms are constantly probing the courts on ways to avoid the notice requirements of HB 1774.

As we have discussed previously in The Advocate, the explosion of weather-related lawsuits was driven by lawyer conduct, including the unlawful and unethical recruitment of clients through door-to-door solicitation by case generators. This led to the disbarment and conviction of one storm-chasing lawyer for insurance fraud and barratry. He was sentenced to five years in prison and agreed to divulge the details of the fraud and barratry scheme he participated in as part of his plea, implicating other attorneys, roofing contractors and public insurance adjusters. A second lawyer has been indicted on the same charges.

Unfortunately, many of the same storm-chasing lawyers who were active after hailstorms remain a problem, seeing an opportunity after Hurricane Harvey to expand their business model. We are hopeful the changes enacted in HB 1774 will put a stop to the worst of their abuses while keeping the courts open for Texans who have legitimate disputes with their insurers.

Please Welcome the Newest TLR Team Member

TLR’s Austin team has grown by one, with the addition of Johnna Cunningham as our new office manager, helping coordinate our office, handling bill tracking and taking on special projects.

Johnna joins us after four years serving as office manager and scheduler in former Sen. Konni Burton’s Capitol office. Prior to this, Johnna was a longtime employee of the Texas Alcoholic Beverage Commission and was also formerly a corrections officer in the Hays County Sheriff’s Office. She is a native of the Austin area and received a bachelor’s degree in criminal justice with a minor in sociology from Southwest Texas State University, now Texas State University. Johnna and her husband are the proud parents of three children.

We are excited to have Johnna on board for session and beyond!

Catch up on the latest tort reform news in TLR’s blog, For the Record. Visit www.tortreform.com/for-the-record.
A review of Texas’ legal system by two national tort reform organizations sheds stark light on the impact of litigation on Texas families and employers, and raises a red flag about a growing weakness in our state’s legal system that threatens the strength of our economy.

First was the U.S. Chamber of Commerce Institute for Legal Reform’s (ILR) analysis of the costs of the U.S. tort system nationally and state by state. The study found that litigation cost every Texas household $3,535 in 2016, slightly more than the national average of $3,329.

Nationwide, the costs of the tort system reached $429 billion, or 2.3 percent of U.S. GDP, according to the study. This accounts for judgments, settlements and the legal costs of lawsuits or enforcement actions, as well as the cost of insuring businesses against the risk of a lawsuit.

Those costs, collectively known as the Tort Tax, are passed along to families through higher prices for consumer goods and services.

Unfortunately, no amount of reform can rid us of the Tort Tax completely, but we can work to make our legal system fairer and more efficient to deter needless lawsuits and make legitimate litigation less costly and time consuming.

Next was the American Tort Reform Association’s (ATRA) annual Judicial Hellholes report, which gave Texas trial courts a Dishonorable Mention for two massive 2018 verdicts.

The first verdict came in August, when a Dallas trial court awarded $241 million to parents whose children had been seriously, and unfortunately, injured in a car accident. The jury found that the car’s seats were defective and unreasonably dangerous, and assigned Toyota Motor Corp. and its seller 95 percent liability and the driver who caused the crash only five percent liability.

According to the ATRA report, “the product exceeded federal safety standards, there was no evidence of a safer alternative design, and the court had refused to allow Toyota to present its own expert rebuttal testimony.” The troublesome aspects of this verdict were that the trial court seems to have allowed the plaintiff lawyer to introduce prejudicial evidence that was irrelevant to the case, and that there was misapplication of Texas law concerning key issues.

The second verdict came two months later, when a San Antonio trial court handed down the largest verdict in the U.S. in 2018. The $740 million judgment against Amrock, a title insurance and property valuation company, was based on a finding that Amrock maliciously misappropriated a start-up company’s trade secrets. According to the ATRA report, “Texas law does not allow the award of speculative damages. For that reason, it is very difficult for a company that has shown modest profits to recover a significant amount of money for lost future profits. But the restrictive nature of Texas’ law on lost-profits damages did not impede the trial court from signing a historic judgment in favor of a start-up company with virtually no history of success in the market.”

Taken together, these two reports shine a spotlight on a weak point in Texas’ legal system: the inconsistent quality of our trial court judiciary. This is much exacerbated by partisan “swings” in our most populous counties, in which experienced judges are swept out of office merely on a partisan tide, without regard to the relative quality of the individual candidates.

While there were some good judges elected in November, the wholesale change in the makeup of our appellate judiciary creates new instability in the legal system, making the environment even more uncertain for Texans who have a dispute in court.

ILR and ATRA aren’t the only ones to notice this chink in the armor. In both CNBC’s and Forbes’ annual listings of best states to do business, Texas received less-than-stellar marks for its legal system, which CNBC dubbed, “sometimes difficult.”

No matter what common-sense lawsuit reforms the Texas Legislature passes, if there aren’t competent, experienced judges on the bench to apply the laws, Texas’ legal system could again become a drag on our economy, as it was prior to the tort reforms that began in the mid-1990s.

TLR, as ever, continues to work to keep Texas’ legal system fair and efficient. We’ll be keeping a close eye on the courts to see how the new trial and appellate judges affect our state’s legal system and economic growth. ■
In November, brothers Dick and David Weekley were two of the inductees in the Texas Business Hall of Fame’s 2018 Business Legends class. Inductees from across Texas, representing several industries, were honored for their legacy of entrepreneurship, personal integrity and community leadership.

For 36 years, the Texas Business Hall of Fame Foundation has honored the best of Texas’ past and present business leaders, and inspired the leaders of the future by awarding scholarships to outstanding students pursuing either a bachelor’s or master’s degree at a Texas college or university.

David is CEO of David Weekley Homes, which was founded in 1976 and is now the nation’s largest privately-owned homebuilder. David Weekley is as devoted to private philanthropy as brother Dick is to public policy. David not only gives large sums to worthy organizations, but he also provides guidance to them about how to spend resources efficiently and effectively.

In his remarks at the induction ceremony, TLR Senior Chairman Dick Weekley touched on the importance of public service:

“To quote my dear friend, Leo Linbeck, America is the only country in the world ever founded on the principal that the citizen is sovereign. We have had no kings, no monarchs. The citizen is sovereign.

But along with this sovereignty comes a responsibility… to become an active and informed participant in our democracy, and to perpetuate the public policies that created this great country and that promote free markets.

Some people tell me they do not engage in public policy and politics because it can be messy or controversial. No kidding… it can be. But it is worth it… because when you succeed, you can positively impact millions of lives.

We live in the most remarkable state in the most remarkable country on earth, but we can never take this gift for granted.”

Additionally in November, longtime TLR supporter Charles Amato received the Texas Business Leadership Council’s (TBLC) 2018 Dick Weekley Public Service Award. The award was created in celebration of TBLC’s first 20 years to honor business leaders who have exemplified the positive outcomes that can arrive at the intersection of volunteerism and public policy. It was named after Dick Weekley, who received the inaugural award in 2014.

Amato is the cofounder and chairman of SWBC in San Antonio, an international financial services company providing products and services to help businesses, families and financial institutions. SWBC has employees in all 50 states and Europe.

Amato serves as a regent with the Texas State University System and as chairman of the Texas State University System Foundation. He is also a board member of the Federal Reserve Bank of Dallas (San Antonio Branch) and vice chairman of TBLC.

TBLC is a statewide network of CEOs and senior business leaders who are committed to ensuring a high quality of life and opportunity for all Texans by building a globally competitive Texas. Through collaboration, research, advocacy and business expertise across multiple industries, TBLC provides a voice for bipartisan insights and recommendations for outcomes on legislation, regulations and statewide funding that impacts both businesses and the citizens of Texas.

Congratulations to Dick and David Weekley and Charles Amato on these prestigious awards. Thank you for all you do to make our state the best place to live, work and raise a family.