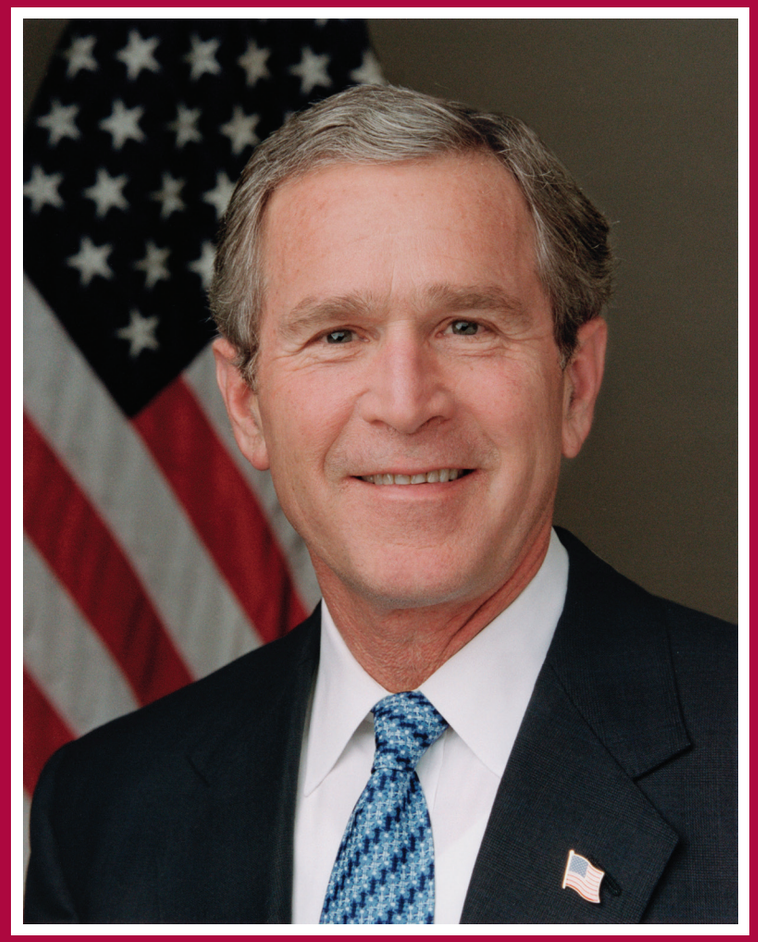
Celebrating 25 Years of

Establishing A Fair & Predictable Civil Justice System in Texas

TLR

"Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it is the only thing that ever did."

–Margaret Mead



GEORGE W. BUSH

November 12, 2019

Greetings to those gathered in Dallas, Texas to celebrate the 25th anniversary of Texans for Lawsuit Reform. Congratulations on this special milestone.

In the early 1990's, lawsuit abuse was a crushing burden on the Texas economy. Employers wouldn't move to or expand in Texas because of our unfair legal system. Doctors were fleeing the state because of high medical liability costs.

I wanted Texas to be a great place to do business, an entrepreneurial heaven – where dreamers and doers felt comfortable risking capital and creating jobs – not a haven for frivolous lawsuits. I knew something needed to be done. Along with Lieutenant Governor Bob Bullock and Speaker Pete Laney, I worked with TLR to make changes that would help the Lone Star State.

Lawsuit reform was a pillar of my campaign for Governor in 1994. In my first legislative session, I signed eight major tort reform bills into law. I'm proud those reforms were the first steps in transforming Texas' economy and making it a better place for families and businesses.

Laura and I send our appreciation to the staff and supporters of TLR for all you have done over the past 25 years to improve the business climate in Texas. Thank you for never wavering in the face of opposition and for never giving up on your vision. Best wishes for your future success as you carry on your important mission. May God bless you, and may God bless Texas.

Governor Rick Perry

Congratulations to Texans for Lawsuit Reform for 25 years of shaping a better future for the Lone Star State!

It's not an understatement to say that lawsuit reform is a pillar of the Texas Miracle. But laying the foundation for Texas' economic success did not happen overnight. It was the result of diligent and persistent work in the face of seemingly insurmountable odds. TLR has never wavered from its vision for a fairer legal system to stop lawsuit abuse that killed job growth, undermined health care and diminished respect for the law.

It's not often that a governor remains in office long enough to see ideas go from conception to reality to resounding long-term success. But as the longest serving governor in Texas history, I watched the fruits of our efforts to create the strongest economy in the nation not only bloom, but thrive, over my 14 years in the Governor's Office. Each principled, common-sense lawsuit reform and each election cycle built on the progress of the last, eventually catapulting Texas to the top in terms of job creation, corporate relocation, quality of life and consistent rankings as the best place in our nation to do business.

The lawsuit reforms TLR has advocated have had a significant impact on Texas families. Measures like 2003's medical liability reform helped bring back doctors to our state and improve access to critical healthcare for Texans. Or 2011's "loser pays" statute, which helped create a mechanism to discourage frivolous lawsuits from clogging up our courts.

But in addition to the big reforms were countless smaller, but meaningful, measures that improved the way Texas' courts work and shut down certain unscrupulous lawyers who exploited Texas statutes to manufacture unnecessary and baseless lawsuits.

Taken as a whole, it's these measures—propelled by TLR's persistent statewide efforts and its collaboration with dedicated elected officials—that transformed Texas from the "lawsuit capital of the world" to a state whose civil justice reforms serve as a model for other states. Without TLR, this would not have been possible.

I'm proud to have been part of this monumental movement in our state. As I've traveled the country, both as governor and today, it's clear that Texas is a national example for common-sense lawsuit reforms. And it's clear that there is no other organization quite like TLR.

Congratulations to all who have been involved in your work, and thank you for all you have done to make Texas the best state to live, work and raise a family.

Sincerely,

Rick Perry

Rick Perry
Former Governor of Texas

Abbott
GOVERNOR

I congratulate the entire Texans for Lawsuit Reform team and your supporters across the state for a quarter century of invaluable work on behalf of Texans. Your leadership, vision and persistence have helped our great state become a beacon for civil justice reform in America.

The Texas of today is very different than the Texas of 25 years ago when TLR was created. Back then, our civil justice system was an embarrassment—ridiculed around the world—and the subject of an infamous *60 Minutes* episode entitled "Justice for Sale." Jackpot justice took a heavy toll on the rule of law and our economy.

Today we are known as a leader in creating and maintaining a fair, efficient and accessible legal system for all Texans. And today, our economy leads the nation largely because of it.

When I speak to CEOs around the country, our strong state legal system and the common-sense lawsuit reforms we have enacted over the past 25 years are hailed as critical assets that set Texas apart from other states. When combined with our low taxes, smart regulations and world-class workforce, the Lone Star State's economy has emerged as the tenth largest in the world. We have come a long way from the days when Texas' legal system was a burden on economic growth and was forcing our doctors to flee the state because they could not afford the medical liability premiums caused by excessive litigation.

But none of this happened by accident.

TLR's efforts over the past 25 years, alongside numerous elected officials who authored and championed tort reform legislation, have been transformative for our legal system, our economy and our state. Through your legislative advocacy and efforts to elect principled lawmakers, judges and leaders, TLR has left a remarkable and unmistakable footprint on Texas history.

Moving forward, there is still much work to do to keep our courts running efficiently and ensure we have competent, experienced judges on the bench who respect the rule of law. We must work for a judicial selection system that makes a priority of placing highly qualified lawyers on our bench to ensure impartiality and professionalism in our judiciary. As history has taught us, change does not always come easily. There will continue to be those who refuse to budge from the status quo. But if the past 25 years have been any indication, you all are primed for the fight.

Texas would not be what it is today without tort reform, and tort reform would not be what it is today without TLR. Cecilia and I offer you our deepest congratulations on your 25th anniversary and our best wishes for another successful 25 years.

Greg Abbott

TLR's Founders Reflect on 25 Years of Collaborative Effort

The Texas economy had been struggling in the decade before TLR's founding in 1994. The energy business was in recession, hundreds of banks had closed and hundreds of thousands of Texans had lost their jobs, but the lawsuit business was booming. It was crucial for the state to restart its market-based engine and once again make itself into one of the most desirable places in which to do business. Unfortunately, Texas was ground zero in the national litigation explosion. There was simply no way the Texas economy could prosper in the long run without first making our civil justice system fair and predictable so disputes could be decided on their merits rather than on fleecing defendants.

In 1994, such a reversal of fortunes in our civil justice system seemed impossible. The personal injury lawyers who benefited from the status quo were fantastically wealthy and extraordinarily politically connected, effectively controlled both the legislature and many Texas courtrooms, and were absolutely committed to fending off any serious reform of the system. Who would have thought then, when a political neophyte named Dick Weekley called a meeting of his peers to talk about the issue, that it would be the beginning of the single most successful state policy-based organization in the country?

When, at Weekley's invitation, about 40 of us first met a quarter century ago to discuss the state of the Texas civil justice system, Dick opened the meeting by saying, "Whenever we have lunch together or visit at cocktail parties, we are constantly complaining about how abusive litigation is hamstringing businesses, how doctors are leaving the state, and that this abuse is a massive waste of human capital and time. Well, we're a free people in a representative democracy. Why don't we quit whining and start doing something about it?" That resonated with the people in the room and was the beginning of a citizens' movement for reform, and the creation of TLR.

We were met with warnings, skepticism and even derision. Master strategist Denis Calabrese told Weekley that he would need to do three things to achieve true tort reform. First, Dick would need to quit his work and devote full time as a volunteer to lead the effort. Second, Dick would have to raise $20 million. Denis then fell silent, not making the third point, figuring the first two were enough to discourage further discussion. But after Dick finished making notes on the first two points, he looked up at Denis and said "And the third thing is…?"

We met with various trade associations and groups that had been trying for incremental tort reform in the Legislature for years, and we laid out our ambitious agenda for the 1995 legislative session. Those who were not struck speechless laughed out loud—literally.

And when we spoke to the two former legislators who would eventually become TLR's lead lobbyists—Mike Toomey and Bill Messer—about our plans for that session, they advised us not to hire them because we would be wasting our money. Instead, they said, we should work on building an organization over the following two years and hire them for the 1997 session.

We were either too naïve or too determined to be discouraged. Hugh Rice Kelly developed eight specific reform proposals, ranging from venue to proportionate responsibility to punitive damages to the Deceptive Trade Practices Act, and more.

We started traveling to carry the message to people across the state—Amarillo, Lubbock, Midland, Wichita Falls, Waco, Tyler, Laredo, McAllen and all of our largest cities. In each place, we encountered real-life stories of lawsuit abuse and a commitment by community leaders to join TLR's mission of reform. In this effort, our co-founder and departed friend, Leo Linbeck, Jr., was instrumental because he had an unsurpassed standing in the Texas business community and friends throughout the state who opened their doors to us.

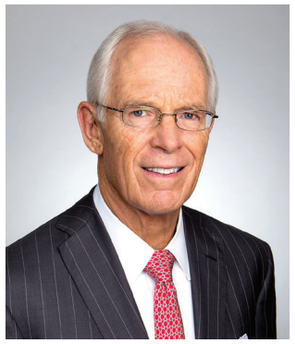
We built a statewide network of citizen leaders in our communities, industries and professions. We retained highly skilled lawyers (Mike Graham, Alan Waldrop and Lee Parsley were our lead outside counsel at varying times over the years) and a large network of experienced volunteer lawyers who understood the legal issues, as well as the problems and abuses, to craft common-sense solutions. Volunteer speakers spanned out to every nook and cranny of Texas (once, in a small town, someone forgot to bring the American flag to the meeting, so everyone pledged allegiance to our flag—facing the iconic photo of John Wayne in his Stetson!). We retained a communications specialist and built a top-notch team of lobbyists. We established a political action committee to engage in state elections because you can't produce good public policy if you don't elect good people to public office. And, importantly, we briefed then-gubernatorial candidate George W. Bush on our agenda, and he made tort reform a central plank in his 1994 campaign platform.

We accomplished transformative reform of our civil justice system in the 1995 session, with Gov. Bush, Lt. Gov. Bob Bullock and Speaker Pete Laney all playing significant roles. There were many who told us that after our success in 1995, we had done enough and we could "call it good." Well, not quite. Even after that first legislative session, we knew some things were left undone. While the initial eight reforms passed in 1995 were critically important, several of them needed supplemental legislation, which we accomplished in the omnibus tort reform bill of 2003. House Bill 4 was strongly backed by Gov. Rick Perry and House Speaker Tom Craddick and also included landmark medical liability reform. In 2005, Senate Bill 15, which received critical support from Lt. Gov. David Dewhurst, reformed the horrendous abuses in asbestos and silica litigation. And the reforms have continued session after session.

In fact, in every session since, legislation initiated or supported by TLR has been enacted into law, including the 2019 session in which numerous important bills were passed and signed by Gov. Greg Abbott, all with the support of Lt. Gov. Dan Patrick and Speaker Dennis Bonnen. Many of the most significant statutory reforms over the years can be found in the back of this booklet.

Despite all of our work, certain clever, unscrupulous plaintiff's attorneys continue to find statutes to exploit and novel legal doctrines to espouse to manufacture lawsuits to enrich themselves through extorted settlements. So, we must continue to defend Texas citizens against lawsuit abuse. This is why a new generation of leaders of TLR is engaged, some of whom already serve on the boards of TLR, the TLR Foundation and TLRPAC. In the future, as in these past 25 years, we must keep in mind Justice Louis Brandeis' admonition: "If we desire respect for the law, we must first make the law respectable."

While the three of us, along with Leo, are considered the founders of TLR, *we recognize that TLR's success is due to the outstanding group of men and women who have served TLR over these many years as staff and consultants, as well as the many servant leaders in our citizenry and in elected offices who have had the wisdom, courage and determination to transform Texas from the "Wild West of litigation," which it was in the 1970s, 1980s and early 1990s, to the tort reform model for the nation that it is today.*



Richard W. Weekley
Senior Chairman

Richard J. Trabulsi, Jr.
Chairman

Hugh Rice Kelly
Senior General Counsel

"As somebody who served for 13 years as a judge in Texas—six years in San Antonio as a district judge, seven years on the Texas Supreme Court—I can tell you firsthand what a difference Texans for Lawsuit Reform has made in our state. Really, we are the example for the nation of what citizen activists can do to change the status quo and restore the sort of balance to our court system that we all want and that is our ideal. It's incredible to me the good work that's been done here in Texas."

—Senator John Cornyn, 2018

"Ten-Gallon Tort Reform"

–The Wall Street Journal

"In the history of Texas, there has never been anything like Texans for Lawsuit Reform…"

–Texas Monthly

"The most important thing that generated 38% of our jobs [in Texas] is tort reform…"

–Richard Fisher, President and CEO,
Federal Reserve Bank of Dallas

"But as [TLR's] political action committee has become the dominant financial engine for legislative races, it has helped create a Legislature that is not only more conservative about legal issues, but more conservative, period."

–New York Times

Leo Linbeck, Jr., Co-Founder of TLR

A Virtuous Man

Leo Linbeck, Jr. was a remarkable man: kind and gentle, awesomely brilliant and impressively knowledgeable, with a soaring spirit and a backbone of steel. His faith in God, his devotion to his Church, his love of family, his patriotism to State and Nation, his commitment to community, his loyalty to friends, were inspirational to all who knew him. In TLR, we seek to emulate his virtues.

VIRTUE. This is the one word that we will forever associate with Leo. He spoke of it often, and cited many treatises on virtue, particularly the works of Aristotle and Aquinas. Virtue is acquired, not gifted. Moral virtue is the developed disposition of excellence at choosing between extremes when expressing an emotion or taking an action. Intellectual virtue is the developed disposition of excellence in the use of one's mind, which leads to prudence and even wisdom.

PRINCIPLE. Leo possessed a rare coherence of opinion on life, ethics, morality and public policy. That is because he believed in "first principles," a core of guiding principles by which to live one's life and inform one's views. He thought there are timeless and universal principles on which a person should base his life, he believed there is right and wrong, good and evil, and he believed that there are God-given rights and obligations. He lived his life accordingly.

HONESTY. Leo had no guile, played no games, engaged in no sleight-of-hand, he was just always straight-ahead honest—honest with himself, honest with others. He had integrity, which David Brooks observes is "the foundation of all cooperative activity."

DEPORTMENT. Leo was always a gentleman. We never once heard him utter a foul word or make a crude or rude statement—not in anger, not in frustration, not in stress, not in exhaustion, not ever.

CIVILITY. Leo often spoke of "civil society," by which he meant a society based on the collective habits and behavior (perhaps best characterized as "manners") of those in all walks of life. Leo was a student of philosophy, and knew Edmund Burke's proposition that, individually, good habits become internalized into virtues; collectively, they create institutions, and the result is the development of social capital or trust. Manners matter.

WISDOM. Leo was wise, as anyone who spent time with him would attest. He acquired the virtue of wisdom through careful study and observation, starting early in his life and continuing until the end of his life on earth. Leo was a prodigious reader, and the way he read was notable. He read slowly, deliberately, thoughtfully (as he did everything). Leo would read and then think about what he read and then read again, and think more. Then he would talk about what he had read. But more of Leo's wisdom came from experience and observation than from reading. Leo would study people, observe them, think about them, mull their motivations, parse their words and contemplate their actions. Leo acquired wisdom through wide-ranging scholarship, a wealth of diverse experiences, and a careful scrutiny of people—all tempered by a brilliant mind and a gentle soul.

PERSUASION. Leo never had to have the last word. But he almost always did. Not by cajoling, or intimidating, or wearing you down with repetition. Leo's persuasiveness came from a logical exposition of a problem, a penetrating exploration of potential solutions, and a careful articulation of, first, what the ideal or best solution would be and, only then, what the achievable solution would be. He persuaded because he was prescient, logical and articulate.

CONVERSATION. Leo was a great conversationalist because he listened attentively and patiently.

FRIENDSHIP. Leo knew how to be a friend. He had friends from childhood, friends from high school, friends from college, friends in Texas, friends in New York and San Francisco, friends, it seems, everywhere. We are not talking about acquaintances or "contacts," of whom Leo had legions. We mean friends, with whom he shared experiences, triumphs and losses, aspirations and anxieties; with whom he traded stories, amusing incidents, good humor and stimulating conversation. People cared about Leo because he cared about them.

ADVICE. In a one-on-one conversation or in a meeting of many, Leo would offer advice in the form of a question, such as, "Do you think it would be wise to consider…?" Or, "I wonder if this idea might be well received…?" Once, when Leo, Dick Weekley and Dick Trabulsi were huddled for a weekend at Trabulsi's mountain cabin to plan for a coming legislative session, the evening drew cool, and Leo, feeling a bit chilled, said: "I wonder if it would be appropriate to have a fire?" It was perfectly "appropriate," and we were soon warmed by aspen logs blazing in the fireplace. With Leo, it was never a demand or a dictate, merely a suggestion. But, with his voice that sounded like God's, Leo's suggestions were usually received as commands.

We miss you, Leo.

TLR Board Members, Officers, Staff, and Key Consultants 2019

Elizabeth Blakemore, Fundraising Consultant

Johnna Cunningham, Austin Office Manager

Alan Hassenflu, Director of TLR and TLRPAC

David Haug, Director of TLR Foundation

Fred W. Heldenfels IV, Treasurer and Director of TLR, Director of TLRPAC

Glenda Hovey, Administrative Director

Hugh Rice Kelly, Senior General Counsel and Director of TLR, President of TLR Foundation, Director of TLRPAC

Drew Lawson, Political Consultant

Lilyanne, McClean, President and Director of TLR

Alison McIntosh, Fundraising Consultant

Lucy Nashed, Communications Consultant

John L. Nau III, Director of TLRPAC

Lee Parsley, General Counsel

Frederick "Shad" Rowe, Director of TLR and TLRPAC

Jeff Shellebarger, Director of TLR

Mary Tipps, Executive Director

Mike Toomey, Lead Lobbyist

Richard J. Trabulsi, Jr., Chairman and Director of TLR, Chairman of TLRPAC, Secretary and Director of TLR Foundation

Kristie Vazquez, Data Manager

Marc Watts, Director of TLR

Michael Weekley, Director of TLR

Richard W. Weekley, Senior Chairman and Director of TLR

TLR would not be what it is today but for several persons who served in key roles in years past. **Lupe Fraga,** a successful Houston businessman, was TLR's treasurer from 1994-2016. **Ken Hoagland** was our first communications consultant, who helped establish TLR with the press and the public. **Sherry Sylvester** was our communications director for 10 years, prior to her becoming a senior advisor to Lt. Gov. Dan Patrick. **Beverly Kishpaugh** coordinated our volunteer speakers for fifteen years until her retirement in 2010. **Matt Welch** was director of TLRPAC in its early years and helped establish it as one of the most effective actors in state political races. Each was instrumental in TLR's success.

The following pages describe much of the

Reform Legislation In Texas 1995-2019

by area of reform

I. Broadly Applicable Reform Legislation

1. **Class Actions (2003).** Originally conceived as a way of litigating numerous identical lawsuits in one court proceeding, class action lawsuits morphed into a weapon of mass destruction in the hands of plaintiff lawyers, who were routinely awarded immense fees for representing the class. Aided by friendly judges who exercised almost unlimited power to "certify" a class action, this kind of litigation poses the risk of such huge damages that defendants almost always settled class actions rather than risk a trial. To stem class action abuse across the state, the Legislature

   - granted the Texas Supreme Court jurisdiction to hear appeals from a trial court class action certification order;
   - required issues within the primary jurisdiction of a state agency to be addressed by that agency before the plaintiff may proceed to court to pursue a class action;
   - abolished percentage-based contingency fees in class actions in favor of hourly based fees with the opportunity to have the fee multiplied in cases of exceptional performance by the plaintiff lawyer; and
   - set a new precedent requiring the plaintiff lawyer to be paid in coupons versus cash when a class action is settled using coupons to compensate the class members.

2. **Punitive Damages (1995 & 2003).** Historically, few guidelines were in place governing the award of punitive damages, which often resulted in wildly excessive awards. The Legislature addressed punitive damages as follows:

   - The 1995 reforms limited punitive damages to the greater of: (i) $200,000 or (ii) two times economic damages plus an amount equal to the amount awarded for non-economic damages up to $750,000.
   - The 1995 reforms also enhanced the burden of proof, permitting an award of punitive damages only upon a showing of "clear and convincing evidence" rather than a mere "preponderance of the evidence."
   - The 2003 reforms required a unanimous 12-0 jury verdict for the award of punitive damages rather than the 10-2 verdict allowed for an award of actual damages.

3. **Proportionate Responsibility (1995 & 2003).** In a civil lawsuit, the jury must determine which of the potential parties caused the plaintiff's injury and then assign a percentage of fault accordingly. The jury also must determine the amount of money the plaintiff is awarded to compensate for her injury. Due to reforms to the proportionate responsibility statutes, the following apply:

   - Texas law now provides that a defendant is liable only for its own percentage of fault unless his fault exceeds 50 percent, in which case the defendant can be required to pay for all damages. Previously, a defendant that was more than 20 percent at fault in an ordinary negligence case could be required to pay all damages.
   - A plaintiff found more than 50 percent responsible is barred from any recovery.
   - The concept of proportionate responsibility applies to all cases, including economic and business torts, in addition to personal injury, death, and other personal tort claims.
   - All persons, including co-defendants who have already settled, bankruptcy petitioners, fugitive criminals, governmental entities entitled to immunity, employers covered by workers' compensation laws, and persons beyond the court's jurisdiction may be assigned a percentage of fault by the jury.

4. **Forum Shopping (1995 & 2003).**

   - The 1995 reforms abolished highly permissive venue rules for corporations that fostered abusive efforts to find a "favorable court" in certain parts of Texas.
   - The 2003 reforms fixed an ambiguity in the 1995 statute, which was originally enacted to require all plaintiffs to independently establish venue by allowing an immediate appeal of a trial court's decision to allow multiple plaintiffs to join a case.
   - To discourage out-of-state and foreign forum shopping into Texas, state forum non conveniens rules were modified to give Texas trial judges broad discretion to dismiss cases that should be pursued in another state or country. (Texas rules became aligned with federal forum non conveniens practice.)

5. **Offer of Settlement (2003 & 2011).** The offer of settlement statute encourages early resolution of legitimate civil cases. The concept is simple: defendants should be encouraged to make a sincere offer at an early stage of the case, and plaintiffs should be encouraged to accept a reasonable offer rather than seeking a "windfall" through prolonged litigation.

   - Parties who make reasonable pretrial settlement offers may be entitled to recover their attorneys' fees and other litigation-related costs when the opponent refuses the offer and then recovers significantly less in the trial than the initial offer.
   - Only defendants can initiate a settlement offer to prevent the creation of a "defendant pay" rule.
   - This offer of settlement procedure was modeled on similar provisions that were added to the Deceptive Trade Practices Act and the Insurance Code's Unfair Claim Settlement Practices Act at TLR's behest in 1995.

6. **Product Liability (2003).** Texas law has long recognized the right of a person to sue a manufacturer for an injury caused by (1) a defective or dangerous product, or (2) insufficient warning labels related to potential dangers arising from the product's use. These cases, however, must have guideposts to prevent meritless lawsuits against safe and beneficial products. In 2003, the Legislature adopted the following reforms:

   - In pharmaceutical cases, Texas law provides a rebuttable presumption in favor of manufacturers, distributors, or prescribers of pharmaceutical products in cases alleging failure to provide adequate warning about the product's risk, *if* the defendant (1) provided the government-approved warnings with the product and (2) did not mislead the government to obtain approval of the product.
   - In other product liability cases, a rebuttable presumption was established in favor of manufacturers who comply with federal standards or regulatory requirements applicable to a product *if* the government standard was (1) mandatory, (2) applicable to the aspect of the product that allegedly caused the harm, and (3) adequate to protect the public from the risk.
   - Sellers of products are not liable for a product defect *if* (1) the seller simply acquires the product from the manufacturer and sells it to the consumer and (2) the manufacturer is a domestic company.

7. **Frivolous Lawsuits (1995, 2011 & 2019).** Civil procedures were amended to discourage and penalize frivolous lawsuits.
   - A 1995 reform provides that
     - by signing a pleading, a lawyer warrants that the pleading (1) is not being presented for any improper purpose, including to harass or cause unnecessary delay, (2) will not needlessly increase in the cost of litigation for the opposing party, and (3) is supported by facts; and
     - if a lawyer signs a pleading that does not fulfill these warranties, he or she may be forced to pay the opposing party's attorney fees or suffer another similar punishment.
   - In 2011, the Legislature asked the Texas Supreme Court to create a rule to quickly dismiss cases that have "no basis in law or fact." The Legislature required that when one of these motions is filed, the party who prevails must be awarded attorney fees.
   - Some courts are reluctant to impose attorney fees on a plaintiff whose case is being dismissed. Consequently, the 2011 statute was amended in 2019 to provide that the award of attorney fees is discretionary rather than mandatory, which should encourage the granting of these motions in appropriate cases.
8. **Actual Damages (2003).** A plaintiff who prevails in a lawsuit is typically entitled to recover his or her "actual damages"—the amount of money necessary to make the plaintiff whole for things like lost wages and medical bills that have been paid or are owed. Laws passed in 2003 in pursuit of that goal accomplished the following:
   - Limited the recovery of healthcare expenses to the amounts actually paid by the plaintiff or someone on the plaintiff's behalf, rather than allowing recovery of "retail" prices that were not actually paid.
   - Allowed the jury to consider a plaintiff's income taxes when awarding lost future income because personal injury awards are not subject to federal income taxes.
   - Prohibited the assessment of prejudgment interest on an award of future damages or punitive damages, correcting a perverse feature of prior law.
   - Lowered prejudgment and post-judgment interest rates to a market-based rate, but with a floor of five percent and a ceiling of 15 percent. Before 2003, the pre- and post-judgment interest rate was set at 10 percent.
9. **Consumer Protection Act (1995).** The Texas Deceptive Trade Practices–Consumer Protection Act (DTPA) was supposed to be a consumer protection statute when enacted in the mid-1970s. A key provision allowed a consumer to recover up to three times her actual damages and attorney's fees to help consumers pursue small cases that otherwise could not be pursued. However, because of the broad statutory language and liberal court interpretations, DTPA claims were pervasive and the initial intent was lost.
   - In 1995, the DTPA was amended to eliminate claims involving matters with a total value of more than $500,000, or more than $100,000 for claims based on a written contract when plaintiff received independent legal advice prior to signing the contract.
   - The DTPA was also amended in 1995 to create a high standard for awarding triple damages. (In most cases, the defendant must have acted "knowingly" or "intentionally" for the plaintiff to recover these enhanced damages.)
   - Generally, DTPA actions are now allowed only for economic damages and are subject to the proportionate responsibility statute.
   - Comprehensive detailed changes were enacted to remove a broad range of one-sided pro-plaintiff provisions.
10. **Appeal Bonds (2003).** A defendant who has been found liable for monetary damages has the right to appeal that judgment. At the same time, the successful plaintiff has a right to try to seek collection during the appeal, *unless* the defendant posts a bond to satisfy the judgment if the appeal is unsuccessful. In 2003, the Texas Legislature passed a law to perfect the statute as follows:
    - No appeal bond can exceed the lesser of $25 million, one-half of defendant's net worth, or the total compensatory (not punitive) damages awarded to the plaintiff.
    - The trial court has discretion to lower the bond amount further if the amount required is so large that it effectively cannot be posted.
11. **Multidistrict Litigation (MDL) Panel (2005).** Texas had no similar procedure prior to this reform. Modeled on federal MDL procedure, a Texas Multidistrict Litigation Panel has the power to transfer factually related cases from multiple counties to a single trial court for consolidated or coordinated pre-trial proceedings. Consolidated proceedings help ensure consistency and save time and money when multiple lawsuits arise from the same facts in multiple counties. Cases not settled are returned to the original counties for trial on the merits.
12. **Attorney General Penalty Power (2019).** In Texas, the DTPA may be used by Texas's Attorney General (AG) and local prosecutors to curtail deceptive conduct. Before the 2019 amendments, the AG could seek to recover a penalty of $20,000 *per alleged violation* of the DTPA on top of recovering restitution on behalf of injured consumers and obtaining an injunction to stop improper conduct. Because the $20,000 per violation penalty created untoward leverage for alleged violation of the DTPA, the Legislature halved the penalty in 2019 to $10,000 per violation.

II. Specific-Need Reform Legislation

1. **Attorney Advertising (2019).** Advertisements for legal services are ubiquitous. They often are designed to frighten consumers in to becoming new clients. In 2019, the Legislature amended the statutes that govern attorney television advertising as follows:
   - The advertisement must disclose that it is an *advertisement* and identify the sponsor of the ad.
   - The advertisement must disclose the name of the attorney who will represent a person who responds to the advertisement. Selection of an attorney is the most important decision a person makes when considering a civil lawsuit. But because the advertisements often are sponsored by solicitors who do not actually provide legal services in Texas, the prospective client is farmed out to an unknown lawyer chosen by the advertiser based on the advertiser's economic considerations, not the client's best interest.
   - If the purpose of the advertisement is to generate clients to sue for prescription drug–related injury, the ad must state that the viewer should *not* discontinue use of a prescription medicine without first consulting a physician. These ads often frighten consumers into discontinuing use of important medications, with disastrous results.
2. **Government Contingent Fee Contracting (1999, 2007 & 2019).** State and local governments (cities, counties, school boards, and others) throughout the nation are heavily recruited by attorneys to file lawsuits against private companies for all kinds of cases, from lawsuits against general contractors for alleged defects in construction of public buildings to lawsuits against pharmaceutical companies for harm caused by opi-

oids. The attorneys always promise "no-cost" representation, unless the case is successful. Often, these are arrangements involving taxpayer resources without public input and/or consideration of the payment terms. Because taxpayers populate the juries, these lawsuits are uniquely challenging to defendants.

- A 1999 law outlaws the award of contingent legal fees for representing the State of Texas based on a percentage of the recovery. This law was a direct result of the State paying over $3 billion to five law firms in the tobacco litigation, for relatively little work. Only hourly based contingent fee arrangements are permitted under the 1999 law. The law allows the attorney to charge a premium fee of up to four times the otherwise reasonable hourly rate to account for the risk assumed by the attorney.
- In 2007, the Legislature established that many local governments in Texas also could not enter into a percentage-based contingent fee contract with a private attorney without complying with the same restrictions applicable to the State. The local governments' contracts became subject to review and approval by the Comptroller of Public Accounts. As a result, many local governments were somewhat restricted in their ability to contract with private attorneys through percentage-based contingent-fee contracts.
- In 2019, the Legislature shifted the contract-review process from the Comptroller to the AG and made restrictions on contingent-fee contracting applicable to *all* local governments. In addition, the 2019 law requires local governments to use a public and fully transparent process to retain contingent-fee lawyers.

3. **Texas Citizens Participation Act (2019).** The Texas Citizens Participation Act (TCPA), which passed in 2003 without TLR involvement, is a law providing for the quick dismissal of a lawsuit filed by one person to harass another person for exercising his or her First Amendment rights. The lawsuit, called a "Strategic Lawsuit Against Public Participation" (SLAPP), is not designed to redress a wrong, but instead to impose so much litigation expense on the defendant that she will *cease* exercising her constitutionally protected right to speak freely. The TCPA as initially drafted was overly broad and used to dismiss many lawsuits having nothing to do with the First Amendment. In 2019, with TLR's engagement, the Legislature amended the law to return it to its intended purpose of protecting freedoms of speech, press and association.

4. **Judicial Campaign Finance Limitations (1995 & 2019).** Since 1876, the citizens of Texas have elected their judges in partisan elections. The judges who seek to serve on the bench must raise funds to pay for advertisements and other campaign activities. Many of the contributions to judges are made by attorneys who practice in their courts, which, at the very least, creates an appearance of impropriety.
   - The 1995 reforms imposed disclosure requirements on the process of judicial fundraising and imposed limits on the amount of funds that any individual or any law firm may make to a judicial candidate.
   - In 2019, the Legislature amended the law to remove ambiguities and aspects that, under recent U.S. Supreme Court decisions, probably were unconstitutional. The 1995 limits on contributions to judicial candidates, however, remain in place.

5. **Weather-Related Litigation (2017).** Following Hurricane Ike in 2008, a large number of lawsuits were filed against the Texas Windstorm Insurance Association (TWIA), which is the insurer of last resort along the Texas coastline. The mass of lawsuits filed against TWIA caused it to become insolvent. Starting in 2013, the litigation model that was used against TWIA was being used against private insurers statewide following severe weather events, like hailstorms and forest fires, causing an increase in insurance rates.
   - In 2011, the Legislature passed a law creating a new process for resolving disputed claims, requiring the parties to use independent experts to determine the validity and value of the claim, virtually eliminating the use of attorneys in TWIA claims disputes.
   - In 2017, to address the explosion in lawsuits against private insurers, the Legislature passed a law requiring policyholders to give their insurers 60 days' notice and a description of the problem before filing a lawsuit, thus giving the insurer time to reevaluate the dispute and work toward a resolution.

6. **Americans With Disabilities Act (ADA) Lawsuits (2017).** The ADA imposes architectural standards on places that are open to the public to ensure that these public facilities are accessible by people with disabilities. The law also creates liability for the failure to comply with the standards. Texas has a parallel law, which also creates liability. Beginning in 2015, a number of lawsuits were filed against Texas businesses by the same attorney representing a single client, all of which alleged technical—and easily repaired—violations of the ADA. This kind of "drive-by" litigation under the ADA has been vexing California businesses for decades.

   In 2017, the Legislature passed a statute requiring that before a lawsuit may be filed alleging that an architectural barrier prevents a disabled person from accessing a public facility, the owner or lessee of the property must be given notice of the impediment and an opportunity to fix it. If it is not fixed within the allotted time, the lawsuit may proceed. The goal of the law is to encourage business owners to comply with the architectural requirements of the ADA so that every business is accessible to all Texans while discouraging "drive-by" lawsuits by plaintiffs.

7. **Forum Shopping in Dredging Cases (2007).** Texas has no natural seaports. All Texas seaports are manmade, typically at the mouths of rivers emptying into the Gulf, which must be regularly dredged to be deep enough to function. In 2005, the companies that dredge Texas's seaports began to see an unusual increase in the number of personal injury lawsuits by former employees being brought in notorious South Texas counties far from the location of the accidents. In many instances, the employee had never reported an injury to the dredging company before filing a lawsuit. Dredging companies were leaving Texas because of their litigation exposure.

   To address the lawyer-driven spike in litigation, the 2007 reform fixed the 1995 venue statute that allowed lawsuits to be pursued in the county in which the plaintiff resides. "Injuries on the seas" now must be pursued in the county in which the injury occurred or the county in which the defendant has its principal place of business in Texas. As a result of this reform, abusive dredging lawsuits evaporated.

8. **Asbestos and Silica Cases (2005, 2013 & 2015).** Lawsuits for alleged asbestos-caused diseases constitute the United States' longest-running mass tort litigation. Because Texas has a strong industrial sector, and for a period of time had permissive statutes governing venue, proportionate responsibility and punitive damages, Texas was the preferred forum for asbestos lawsuits. Tens of thousands of plaintiffs filed asbestos lawsuits in Texas's courts. Then, in the early 2000s, the asbestos lawsuit model was applied to silica-related injuries.
   - The 2005 legislation
     - » required courts to use strict, medically sound diagnostic criteria to determine if a plaintiff truly has a disease caused by exposure to asbestos or silica, to address the problem of lawyers filing lawsuits on behalf of unimpaired people;
     - » transferred asbestos and silica cases pending in Texas state courts to two multidistrict litigation (MDL) courts for coordinated and highly efficient pretrial proceedings;

- » moved pending cases by unimpaired plaintiffs to two "inactive dockets" managed by the MDL courts, where the cases remain pending until each plaintiff establishes an actual impairment under the statutory medical criteria;
- » required dismissal of new asbestos or silica cases that do not satisfy the statutory medical criteria, but allowed a plaintiff to re-file his lawsuit later if actual impairment is demonstrated;
- » prohibited "bundling" of hundreds of plaintiffs' cases into a single lawsuit, a tool regularly used before 2005 by personal injury trial lawyers to leverage settlements on behalf of unimpaired plaintiffs;
- » limited the use of diagnostic materials obtained through mass medical screenings paid for by trial lawyers and used to identify potential clients, most of whom have no actual asbestos- or silica-caused disease; and
- » extended the statute of limitations to allow an asbestos or silica lawsuit to be filed within two years after diagnosis of actual impairment no matter when the harmful exposure happened, thus ensuring access to the courts for anyone suffering from an asbestos- or silica-caused disease.

- Legislation enacted in 2013 required the MDL pretrial courts to dismiss all unimpaired plaintiffs' cases sitting on the inactive docket, but these cases can be refiled at any time the plaintiffs demonstrate an asbestos or silica-related injury.
- Legislation enacted in 2015 requires asbestos claimants to pursue their claims against special bankruptcy trusts that have funds available to compensate claimants for asbestos illnesses before a lawsuit against solvent defendants can move forward in a Texas court. The claimants must file all possible trust claims—and disclose the claims and money received from them—to the defendants in the lawsuit. By requiring this disclosure, asbestos lawyers are prevented from making inconsistent allegations in the bankruptcy trust process and the lawsuit. In other words, the lawyer cannot allege that companies X, Y and Z are solely responsible for a claimant's injury in the bankruptcy process, and then say that companies A, B and C are solely responsible for the same injury in the lawsuit.

9. **Healthcare Providers' Liability (2003).** Before 2003, physicians were leaving Texas in large numbers because they could not afford the medical malpractice insurance premiums. The problem was especially acute in high-risk specialties (like obstetrics), in the Texas Rio Grande Valley, and in rural areas. The Texas Legislature addressed the problem with a comprehensive reform package in 2003.
   - Based on experience garnered from a California statute, caps on non-economic damages (such as pain and suffering) were imposed on all healthcare liability cases. The caps are:
     - » A $250,000 per-claimant cap applies to all doctors and nurses.
     - » A separate $250,000 cap applies to each healthcare institution on a per-defendant basis, subject to a $500,000 aggregate cap in favor of all healthcare institutions in the case.
   - An existing limitation on personal liability of government employees was extended to other healthcare professionals in government hospitals as well as to nonprofit operators of city hospitals or hospitals operated by special hospital districts.
   - The 2003 law also provides additional liability limits to nonprofit hospitals or systems that provide (1) charity care and community benefits in an amount equal to at least eight percent of the net patient revenue of the hospital or system, and (2) at least 40 percent of the charity care provided in the county in which the hospital or system is located.

10. **Seat Belt Evidence (2003).** Texas courts had concluded that evidence of seat belt non-usage by a person injured in a vehicle accident was not admissible, even though it is the policy of the state to require seat belt usage and it was undisputed that the plaintiff's injury in many accidents would have been significantly lessened if a seat belt had been used. The 2003 law allows the jury to know whether a plaintiff was wearing a seat belt at the time of an accident for the purpose of allocating fault among the parties to the case.
11. **Migration of Air Particles (2003).** Creative plaintiff lawyers developed a theory that molecules released into the air by a defendant were "trespassing" onto neighboring property and causing injury. Under the common law that has existed for centuries, trespassing on land is presumed to cause injury to *the owner of the land*, without a showing of an actual injury. Using a trespass claim in regard to the "migration" of air particles created a new, broad liability without any proof of actual damages to the person who inhaled the particles. The 2003 law also narrowed the rules governing "toxic tort" cases to require that the migration or transportation of an air contaminant (other than an odor) may create liability only if there is a showing of actual and substantial damage to the plaintiff.

III. Reforms to Protect Individuals

1. **Schoolteacher Immunity (2003).** A 2003 law updated protection for teachers against non-meritorious litigation related to actions taken by the teacher at school.
2. **Volunteer Immunity (1995, 1999 & 2003).**
   - The 1995 reform expanded immunity coverage of prior law to state and local elected and appointed officials, volunteers, employees, and board and commission members.
   - The 1999 reform extended protection to doctors and other health care providers who donate time and skill to treat persons unable to afford medical care.
   - A 2003 reform provides additional protection from lawsuits for volunteers of charitable organizations and volunteer firefighters.
3. **Claims Against Design Professionals (2003).** In a lawsuit against a registered architect or licensed professional engineer for an alleged design defect in a building or other structure, a 2003 law requires the plaintiff to provide an affidavit by a third-party registered architect or licensed professional engineer setting forth the specific acts of negligence allegedly committed by the defendant, at the time suit is filed. As a result, a plaintiff cannot file a lawsuit against an architect or engineer based on mere supposition that a structural failure was the result of a defective design.
4. **Landowner Liability to Trespassers (2011).** In 2011, the Texas Legislature passed a law ensuring that Texas landowners will not, in most cases, have liability to trespassers who are injured on the owner's property. This was a codification of long-standing Texas common law, which required landowners to protect invited guests, but not to protect trespassers. The exceptions in the common law and 2011 statute are that a landowner cannot intentionally injure a trespasser or create a feature of the land that is dangerous but so attractive to children as to invite them to trespass.
5. **Truthful Disclosures About Employees (1999).** Under a 1999 law, Texas employers are protected from civil liability when the employer discloses truthful information about a current or former employee, unless it is proven by clear and convincing evidence (a higher standard than a mere preponderance of the evidence) that the information provided by the employer was known to be false at the time the disclosure was made or that the disclosure was made with malice or in reckless disregard for the truth or falsity of the information disclosed.

In addition to the reforms listed above, other important reforms have been enacted into law since TLR was founded in 1994. A more detailed summary of reform legislation in Texas during this period can be viewed at the TLR website: www.tortreform.com

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"If we desire respect for the law, we must first make the law respectable."

–Justice Louis Brandeis

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