JANUARY 2021

TLR ADVOCATE

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

JANUARY 2021

IN THIS ISSUE

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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MAKE TEXAS A BEACON for CIVIL JUSTICE in AMERICA

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Previewing the 87th Legislative Session

By Richard J. Trabulsi Jr., TLR Chairman

The 87th Legislature this year is the 14th in which TLR will offer meaningful reforms to our judiciary and civil justice system. This follows a successful session in 2019, in which numerous bills advocated by TLR were enacted with broad bipartisan support. **Gov. Greg Abbott**, **Lt. Gov. Dan Patrick** and newly-elected **House Speaker Dade Phelan** are strong advocates for a fair and balanced civil justice system.

TLR has long advocated for moving from the vagaries of an elected judiciary to a selection system that puts judicial qualifications at the forefront, and that will enhance the stability and professionalism of the Texas bench. We propose that Texas judges be nominated by the governor for 12-year terms, reviewed by a non-partisan citizens' panel to rate the nominees prior to action by the Texas Senate, confirmed (or rejected) by the Senate, and subject to an up-or-down popular vote in a November election within a few years of assuming office.

We have also long advocated for greater efficiency in our intermediate appellate courts. Until 1977, the Texas Constitution limited each of those courts to only three judges. As our population grew, the Legislature created new appellate courts rather than adding judges to the existing courts. As a result, Texas has 14 intermediate appellate courts, whereas more-populous California has only five, and the entire federal system has only 13. Our 14 appellate courts have unequal workloads, and in some parts of our state, a district court answers to several different appellate courts. Texas should consolidate its intermediate appellate courts to achieve more efficiency and administrative rationality.

Our trial court system also needs to do better in handling complex business litigation. The Texas court system already recognizes the unique aspects of probate, family and criminal matters and establishes special courts to handle each of them. If we do a better job with complex business litigation, we will add to Texas' excellent reputation as a great place to establish and grow businesses.

Entrepreneurial plaintiff's lawyers are wreaking havoc on our transportation system by targeting commercial vehicles. Every accident, no matter how minor, is now seen as an enrichment opportunity by advertising trial lawyers. This is wrecking the insurance market for commercial vehicles. The abusive litigation practices must end if we want a viable, affordable transportation system in Texas.

TLR will also offer an adjustment to one of our landmark reforms, the "paid or incurred" statute that sought to end "phantom damages" in personal injury lawsuits seeking recovery of medical expenses. This reform is now eroded by plaintiff's attorneys, who have teamed up with unscrupulous medical providers to inflate damages.

Texas is blessed with a functioning Legislature that avoids rank partisanship. We look forward to our work with the 87th Legislature in 2021. ■

Welcoming Texas' Newest Supreme Court Justice

Gov. Greg Abbott made another strong appointment to the Texas Supreme Court in October, naming **Rebeca Aizpuru Huddle** to replace retiring **Justice Paul Green**. This is the fourth appointment Gov. Abbott has made to the court, building on the tradition of principled gubernatorial appointments to our state's high courts.

Justice Green had an exceptional career as an attorney and jurist, serving 15 years on the state's high court and retiring as the second most senior justice behind Chief Justice Nathan Hecht. His extensive background in litigation was a critical asset to the Texas Supreme Court. He practiced law for nearly 20 years before being elected to the Fourth Court of Appeals in San Antonio, where he served for 10 years before being elected to the Texas Supreme Court. He served as president of the San Antonio Bar Association, a director of the State Bar of Texas and a member of the American Bar Association House of Delegates.

While Justice Green's retirement is a loss to the court, it is clear Justice Huddle has the knowledge, experience and temperament to serve as an outstanding jurist.

Justice Huddle was born and raised in El Paso. She received a bachelor's degree from Stanford University and a law degree from The University of Texas at Austin. She previously served as a justice on the First Court of Appeals in Houston. Most recently, she was a litigation attorney and partner-in-charge at Baker Botts Houston, where she was the firmwide co-chair of its commercial litigation practice group.

Upon Justice Huddle's appointment, **TLR Senior Chairman Richard W. Weekley** noted, "Justice Huddle is an experienced and accomplished litigator. As a judge on the First Court of Appeals, she authored more than 400 reasoned majority opinions. With more than 1,000 appeals and original proceedings adjudicated, Justice Huddle has a proven track record of principled decision making. She has also demonstrated a commitment to ensuring every Texan—especially the most vulnerable—has access to justice. She will be a tremendous asset to the Texas Supreme Court." ■

A New Texas House Speaker in the 87th Legislative Session

The Texas House has new leadership this session, with **Rep. Dade Phelan (R-Beaumont)** taking up the speaker's gavel with early and substantial bipartisan support from the members.

Speaker Phelan has consistently advocated for a principled, conservative agenda and gained the respect of his peers on both sides of the aisle. He will provide critical leadership as Texas embarks on a challenging legislative session that will address pandemic recovery, a budget shortfall, improved efficiency in our courts and redistricting, among other critical issues.

Speaker Phelan was born and raised in Southeast Texas. His fourth-generation, family-owned commercial real estate development firm owns and manages retail, industrial and office property in Texas and Arkansas. He received bachelor's degrees in government and business from The University of Texas at Austin.

Speaker Phelan was elected to the Texas House in 2014. He has served as chair of the House Committee on State Affairs, vice chair of the Natural Resources Committee, and a member of the Calendars, Appropriations and Elections committees, as well as the Select Committee on Ports, Innovation and Infrastructure. Speaker Phelan has focused on implementing policies that fuel Texas' economic growth, including voting to shut down job-killing lawsuit abuse.

Capitol Inside named Speaker Phelan an Outstanding Freshman in 2015 and the Most Valuable Sophomore in 2017, and *Texas Monthly* recognized him as one of the Best Legislators of 2019. He co-chaired the Texas Advisory Committee State Water Infrastructure Fund, overseeing the operation, function and structure of the state water fund and assisting the Texas Water Development Board in providing $27 billion in state water plan projects over the next 50 years. He is a two-time gubernatorial appointee to and former president of the Lower Neches Valley Authority. His board service includes the Texas Lyceum, Southeast Texas CASA, Golden Triangle Coastal Conservation Association, The Jefferson Theater, St. Anne Catholic Church and Catholic Charities of Southeast Texas.

His wife, Kim, is a solo practitioner attorney, and together they have four sons. ■

Perspectives on Commercial Vehicle Litigation Abuse

By Mary Tipps, TLR Executive Director

Whether they operate vehicle fleets or rely on others to transport their goods and services, Texas companies are struggling with the double uncertainty of the pandemic and a heightened litigation environment. Their stories highlight how lawsuit abuse continues to affect the Texas economy, even for companies that haven't been sued. The following interviews have been edited for length and clarity.

"It's the small trucking companies that are hurting, but it's also the small trucking companies that keep us in business."

PAM GROOMS—ATLAS SAND CO., AUSTIN, TX

Atlas Sand Co. is a mining company that works with pressure pumpers and companies of all sizes in the fracking business. We do the majority of our work in the Permian Basin. We handle all of the mining but we don't operate the trucks that transport the sand. We rely on third-party contractors to carry our product to the worksite.

We have very stringent guidelines for the companies we contract with because we want to protect our product, our company and our end users. Our trucking contractors go through a thorough vetting process that includes a review of their Texas Department of Transportation safety records, as well as a drug and alcohol report. We also require the trucking companies we work with to carry specific levels of insurance.

When I first began working at Atlas Sand, it wasn't a problem to find a trucking company that met all of our requirements. Today, that's changed. Our insurance requirements are becoming increasingly challenging for trucking companies to meet. Many of the companies we've worked with in the past no longer qualify to work with us now because they can't afford the insurance we require. Some have flat out gone out of business because they can't afford insurance *period*.

It's even becoming more difficult to find new companies to work with. I spoke recently with a female trucker who was working with a company that took 30 percent of her profits to pay for her insurance. She owned her own truck and was looking into starting her own business, but simply couldn't afford the insurance. It always comes down to the cost of insurance, and the risk of lawsuits is often the reason it's so expensive.

Because the costs are increasing for the trucking companies, their cost is increasing for us as well. We've been paying more for the same trucking contracts, when we can find anyone at all to haul our sand. We had an especially difficult time finding trucks during the pandemic.

The majority of the companies we work with have fewer than 100 trucks, and we work with quite a few that have less than 50 and less than 10. It's the small trucking companies that are hurting, but it's also the small trucking companies that keep us in business.

We support the trucking companies and we understand their value. We understand what they're going through. We operate a small fleet of pickup trucks, and even our insurance for those small trucks has increased. We feel fortunate that we've been able to get through the pandemic, but we know a lot of other companies haven't been so lucky. Ultimately, we need the trucking companies to stay in business so we can stay in business.

"You've worked so hard to build something with your family, to create jobs and to do right by your community and give back. And one lawyer can come in and take all of that away with false claims."

SARAH SAGREDO-HAMMOND —ATLAS ELECTRICAL, AIR CONDITIONING, REFRIGERATION AND PLUMBING SERVICES INC., ALTON, TX

Atlas is a family business. It was started by my father nearly 39 years ago, and my brother and I have been running it since 2012. We are a big part of this community. We're visible—people know me and they know the company, which is incredible for growing the business but also puts a huge target on our back when it comes to litigation.

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The Evolution of Commercial Vehicle Litigation Abuse

By Lee Parsley, TLR General Counsel

Big trucks. Little trucks. Commercial vehicles. Company cars. Delivery vans.

No matter the title, all of those categories mean one thing to certain personal injury trial lawyers: the opportunity for a big payout.

If you've turned on a TV or driven down the highway, you've seen law firms advertising for clients who have been involved in an accident. What started as lawsuits targeting eighteen-wheelers has evolved. Now any vehicle with a company logo on it—no matter the size, industry or even whether they were at fault in a crash—is a target for a lawsuit.

The proof is in the numbers. Motor vehicle litigation *has increased 118 percent* in Texas since 2008. In 2019, a lawsuit was filed in one out of every 10 crashes. But over the same period, the number of highway fatalities and severe injuries in Texas has increased *less than five percent*, even though highway usage has almost doubled.

Cars are safer. Trucks are safer. Highways are safer. Yet the number of lawsuits continues to increase. This is unsustainable.

How does the abusive lawsuit scheme work, and how has it evolved to capture such a broad array of vehicle types and sizes? How did a system that is meant to compensate Texans who are injured in an automobile accident become a profit center for plaintiff's attorneys?

As is often the case with abusive litigation, the answer lies with a few unscrupulous attorneys exploiting a loophole in existing law.

Over-Treatment, Over-Diagnosis and Over-Billing

In our review of motor vehicle lawsuit filings and throughout our conversations with those who operate commercial vehicle fleets, inflated medical costs have emerged as a major driver of jackpot justice in vehicle litigation.

The plaintiff's lawyers who do this kind of work typically refer their clients to select, cooperative healthcare providers—including doctors, chiropractors and pain management specialists. The providers diagnose ailments generously (soft tissue injuries are diagnosed as traumatic back injuries), treat the plaintiff extensively (the more visits to the doctor or chiropractor the better), recommend treatments liberally (surgical recommendations are common) and bill for services excessively (every treatment is billed at inflated rates).

The healthcare provider also typically agrees to forego payment by a third party—such as a health insurer, Medicare or Medicaid—under an agreement with the lawyer called a "letter of protection." The letter assures that the healthcare provider will be paid out of the plaintiff's future lawsuit recovery. This mechanism allows the lawyer to pay the provider more than they would have received from an insurer, but less than the amount awarded by the jury. Everyone comes away with a little extra. In effect, the healthcare providers are working on a contingent-fee basis. They don't get paid unless the plaintiff wins. And the more the plaintiff wins, the more the provider is paid.

All of this is done to circumvent a 2003 law called the "paid or incurred" statute, which requires a plaintiff to present to the jury the amount *actually* paid, not the amount *billed* by the healthcare provider. Refusing to use an available third-party payer avoids the "discounted price" negotiated by insurers, and allows the attorney to present the higher, billed rate to the jury as damages when, in fact, that amount has not actually been paid and is not owed.

This scheme drives up the judgment or settlement value of the lawsuit. Juries tend to award more in non-economic damages—such as mental anguish and pain and suffering—and are more likely to award punitive damages if the medical bills are substantial. This work-around scheme developed by personal injury lawyers is plainly contrary to the intent of the paid or incurred statute, which was to prevent the use of medical billing to create phantom damages and to remove an incentive to inflate medical damages.

The "Reptile Theory" and Social Inflation as Trial Tactics

In trial, inflated medical bills are one piece of the litigation puzzle presented to the jury. To drive home the notion that the defendant is a bad actor and deserves to be punished for inflicting harm on the plaintiff, the

attorneys rely on fear to build a narrative that supports the inflated damage amount.

This is achieved using what plaintiff's attorneys call the "Reptile Theory," a method of presenting evidence that is supposed to appeal to every human's innate *fight or flight instinct*. The *flight instinct* is engaged when the attorney attempts to paint the commercial vehicle owner as a danger to society, presenting evidence that leads the jury to believe the defendant has a *pattern* of reckless actions. In many cases, this evidence is prejudicial or doesn't pertain to the facts of the case in question, but is still allowed to be admitted into evidence by inexperienced or biased trial judges.

The *fight instinct*, in turn, is engaged when the jury is asked to fight for the safety of society—not only the plaintiff, but also the jurors and their families and all of us—by awarding to the plaintiff the highest amount of damages conceivable in order to punish the defendant. All of this is designed to win a verdict of tens of millions or hundreds of millions of dollars.

These "nuclear verdicts" are also fueled by social inflation—our society's collective devaluation of a dollar. Every day, we're exposed to athletes and celebrities who make tens of millions of dollars. We are also exposed to a barrage of trial lawyer advertising bragging about huge verdicts for plaintiffs. All of this skews juries' perceptions about the value of a dollar. If a baseball player's contract is worth $100 million, why shouldn't a plaintiff who suffered the serious injuries described by a hired-gun doctor receive millions of dollars as well?

Creating a Litigation Vortex

Under these conditions, Texas has seen several enormous verdicts in trucking lawsuits, which have seriously eroded the commercial vehicle insurance market and threaten to destroy it entirely. Aggressive advertising campaigns provide a steady stream of cases to personal injury trial lawyers, who have figured out how to maximize their percentage fees.

Because of the fear of a nuclear verdict if a case goes to trial in our current environment, insurers are paying on cases that have little merit and paying too much on cases that have some merit. To make up for the losses, the insurers that are still writing policies in Texas are increasing premiums and deductibles for all commercial vehicle owners, without regard to claims history.

The extortion-like settlements in these lawsuits create a "litigation vortex," encouraging more advertising, more lawsuits, more settlements and higher insurance premiums.

Only the Texas Legislature Can End this Abuse

The Legislature can right the balance of this litigation by clarifying the rules for how commercial vehicle lawsuits are tried. The goal, as always, must be to ensure people who are legitimately injured have access to a fair and efficient judicial system that awards appropriate compensation. But the system must be fair for *all* litigants, not just plaintiffs.

At its core, this litigation scheme is built on presenting misleading evidence to the jury—whether in the form of inflated medical bills or prejudicial evidence about a commercial vehicle operator's conduct. We cannot expect juries to administer justice appropriately without having access to the full and accurate facts of the specific case they are hearing.

The first step is fixing the paid or incurred statute to reinstitute the Legislature's intent from 2003. If an independent third party has paid a plaintiff's medical bills, the jury must base its decision about medical damages on the amount actually paid or still owed by the third party. If the medical bills have not been paid, the jury must be given information that will allow it to understand the true value of the healthcare services provided to the plaintiff, not just the amount billed by the provider, which is rarely—if ever—an amount a healthcare provider expects to be paid.

The second step is to focus crash lawsuits on two questions: who caused the accident and what are the plaintiff's legitimate injuries? Crash lawsuits should not be days-long presentations of wildly skewed evidence about the company's general employment and safety practices. The evidence presented should be directly relevant to causation and injuries. Defendants must be allowed to put into evidence photographs of the vehicles involved in the accident—which often show little damage—and inform the jury about the ongoing financial relationship between the plaintiff lawyer and healthcare provider. And if damages for future medical bills are requested, any award of money to pay future medical bills should be paid in the future.

These steps will literally help save Texas' commercial vehicle industry and create a level litigation playing field for *all* commercial vehicle owners who are alleged to have caused injuries in a collision. ■

An Efficient and Rational Appellate Court System

Texas has 14 intermediate appellate courts, more than the federal judicial system and any other state. The structure of Texas' intermediate appellate court system is fraught with defects that create conflicts among the courts, unnecessary burdens on Texas' two high courts, inefficiencies and confusion.

One of the most acute defects is that the intermediate appellate courts have overlapping geographic territories. For example, the geographic and substantive jurisdictions of the two Houston-based appellate courts are identical, while three other northeast Texas courts have overlapping boundaries. As a result, multiple Texas counties sit in two appellate court districts. No other state has appellate courts with overlapping boundaries.

Trial judges in the overlapping counties answer to two different appellate courts. Consequently, in pretrial proceedings and during trial, these judges do not know which appellate court will hear an appeal of the case they are adjudicating. Therefore, they do not know which appellate court's precedent to follow when ruling on motions and objections. Further, there is no system for allocating appeals between competing appellate courts from the overlapping counties in northeast Texas. This often causes litigants to race to perfect an appeal because the first filed notice of appeal establishes that appellate court's "dominant jurisdiction" over the case, to the exclusion of the competing court of appeals.

Additionally, appellate court district lines bisect multi-county trial court districts in almost every area of the state, adding to the disorganization. The trial judges in these districts answer to two, three *and sometimes even four* different courts of appeals. As these judges "ride their circuits," hearing cases in the different counties within their districts, they are required to know and correctly apply appellate court precedent for the specific county in which a trial is being held. Given the breadth of issues presented to these trial courts on a daily basis, the task is practically impossible.

The number of justices serving on each intermediate appellate court ranges from three to 13. Because the number of cases filed in each court varies significantly each year, some courts are too busy while others don't have enough work to do. To address this inequity, the Texas Supreme Court regularly transfers cases between the appellate courts to equalize their dockets. These transfers are unpopular with lawyers, litigants and judges, and create their own problems. Famously, one case was appealed three times and heard by a different intermediate appellate court each time.

Another unusual aspect of Texas' appellate court system is the allocation of justices in election cycles. Each of the 80 justices on these courts must stand for election every six years. Ideally, about one-third of the judiciary would stand for election in each cycle.

Instead, 45 seats appear on the ballot in one election cycle, 19 are on the ballot in the next cycle and 16 are on the ballot in the third cycle. *This means more than half the intermediate appellate court judiciary may be devoting time to campaigning for reelection the same year*, thus taking away from their work on the courts. When a significant number of justices are replaced by voters in a single election—as often happens in partisan sweeps—the courts of appeals are suddenly piloted by new, often inexperienced justices, who must deal with a backlogged caseload that will not abate while they learn the job.

There is nothing new about these problems. In 2007, the **Texans for Lawsuit Reform Foundation** joined a chorus of voices that had been advocating for structural reform of the courts for decades. The foundation published *The Texas Judicial System, Recommendations for Reform*, outlining many problems with Texas' judicial system.

Building on this previous work, the foundation recently published a new paper, *Intermediate Appellate Courts in Texas: A System Needing Structural Repair*, focusing solely on the intermediate appellate courts. Both are available at **www.TLRFoundation.com**.

A System Needing Structural Repair provides a detailed history of the development of Texas' intermediate appellate courts, followed by a description of the inefficiencies and defects within the existing system, and a comparison to other jurisdictions. The paper also sets forth ways to remediate the more obvious defects in order to achieve an efficient and consistent structure that will benefit litigants, the legal system and all Texans. ■

Charting A Post-COVID-19 Course for Texas

Nearly a year after COVID-19 became a regular part of our everyday lives, Texas continues to work to recover from the pandemic.

Over the past year, we've seen courage and determination displayed by our healthcare providers, first responders and the workers who are keeping the essential elements of our economy functioning—food producers, truckers, manufacturers of needed products, warehouse workers, grocers and others.

The fact remains, however, that this virus has forced our nation to tread new ground. We have before us the formidable tasks of controlling and defeating the virus, restoring our society and rebuilding our economy. A tsunami of plaintiff lawyer-inspired litigation would deter and diminish our efforts.

Mass litigation will cause delay and division and impose costs that will hamper our recovery and impede the ability of our businesses and industries to restore our economy to its pre-virus vigor and bring us back to full employment.

A first step toward that recovery is lifting the burden of uncertainty COVID-19 has imposed on businesses and healthcare providers across the state. In the absence of reasonable statutory shields, some businesses have posted waivers or begun requiring patrons to sign a waiver stating they understand the inherent risk of contracting COVID-19 while visiting their establishment during the pandemic, and will not sue if sickened. But that isn't a long-term solution.

Any effort to impose liability on businesses or healthcare providers as a result of the pandemic should take into account that the virus itself is the essential cause of harm. Businesses and professionals should not be penalized by lawsuits that seek to blame the blameless.

Those who have acted responsibly and followed government guidance in good faith during the pandemic should have reasonable liability protections. Businesses should not face liability based on 20/20 hindsight. Instead, liability should incur only if their actions were reckless in a time of great uncertainty. For our healthcare providers working under demanding circumstances, liability should be imposed only for intentional harmful acts or gross negligence. And a plaintiff should be required to show, using scientifically valid evidence, a direct connection between the defendant and the harm suffered by the plaintiff.

At the same time, there cannot be immunity for businesses that act with reckless disregard to the health of their employees or customers. There should be no blanket immunity for those who act recklessly or are grossly negligent.

As Texas Christian University General Counsel Leroy Tyner recently testified to the U.S. Senate Judiciary Committee, "My torts professor taught us that uncertainty about the standard of care creates what he calls a 'cliff problem'…. When we know there's a liability cliff—some line that will be catastrophic to step across—but we don't know exactly where the edge of the cliff is, we will avoid the ground near the cliff altogether."

Innovation, adaptability and common sense are required both to respond to the health issues caused by the virus and to keep our economy functioning.

As the legislative session begins, TLR continues to believe the federal and state governments—in executive orders, administrative regulations and legislation, as appropriate—must provide reasonable liability protections to our healthcare providers and businesses, including forward-looking protections as we recover from this global pandemic. We will work for legislation this session that provides such reasonable protections. ■

INTRODUCING THE KEEP TEXAS TRUCKING COALITION

TLR has joined with nearly 100 (and growing) businesses and industry groups of all sizes to create the Keep Texas Trucking Coalition to urge the Legislature to stop abusive lawsuits against commercial vehicles. The future of our state depends on it.

Help us make a difference for Texas.

Join the coalition by visiting *www.keeptexastrucking.com.*

Remembering Rice M. Tilley Jr., Scion of Fort Worth

By Richard W. Weekley, TLR Senior Chairman

Our friend and supporter, **Rice Tilley**, who passed away last October, was an able lawyer, a respected leader in his community and one of the Texans who most helped us establish TLR as a force in Texas politics and public policy. We valued Rice's legal mind in helping us recognize and correct abuses in the law, his wisdom in counseling us on building our support in Fort Worth, and his insights on political candidates and campaigns.

Rice M. Tilley Jr.

Rice had a distinguished academic career, with degrees from Phillips Academy at Andover, Washington & Lee University, SMU School of Law and New York University School of Law, receiving a master's degree in taxation.

From 1962 to 1964, he served in the U.S. Army, stationed in Germany as battery commander of a missile air defense battery, and retired as a captain.

In 1964, Rice returned to Fort Worth to begin his legal career. He lectured numerous times in Texas, Oklahoma and at Notre Dame in the fields of taxation, securities law and real estate law. He served as chairman of the Real Estate and Probate Section of the State Bar of Texas.

His civic involvement included six years on the University of North Texas Board of Regents and 30 years on the Texas Wesleyan University Board of Trustees. He served a two-year term as chairman of the board of the Fort Worth Chamber of Commerce. He also served as president of the Fort Worth Opera Association and Casa Mañana Musicals, and on the boards of directors and as an attorney for the Van Cliburn Foundation and the Fort Worth Symphony Orchestra. For several decades he was chairman emeritus of Leadership Fort Worth.

In 2014, he retired from Haynes and Boone after practicing law for almost half a century. At the time of his retirement, he received the Lifetime Achievement Award, presented by the Texas A&M University School of Law, adding to his many other honors and awards.

Rice leaves an indelible imprint on TLR and a hole in our hearts. We are thankful that we had him, and and we will miss him. ■

Perspectives on Commercial Vehicle Litigation Abuse, ***continued from page 3***

Our technicians are running service calls all over town all day, and we have fewer than 30 vehicles on the road. The litigation environment is becoming incredibly frustrating. We've never filed a claim with our insurance, but our premiums still keep going up. Today, we're paying 40 percent more for insurance than we were just five years ago, and again, that's never having filed a claim.

I was recently served with papers for a lawsuit that we have been trying to settle for nearly two years. It was a supposedly minor incident. The person refused medical treatment at the scene and didn't go to a hospital, see a doctor or seek medical emergency care within 10 days of the alleged incident. Our driver said the individual said he was fine and walked away from the scene. About two weeks later, we received a letter from his attorney. The first thing the attorney said was, "tell us the limit on your liability coverage because my client needs money for medical care." The worst part is that they didn't even start the process properly by going through worker's compensation, because the person was working at his job at the time of the incident.

I want to do the right thing. We've had some minor accidents in the past that we've paid for out of pocket. Those were legitimate cases that had legitimate damages and medical bills. But asking for half a million dollars off the bat when the individual claimed to be fine at the scene and never had medical care, except going to "therapy"—that doesn't sit right with me.

It's disheartening as a business owner. When did it become ok for lawyers and people to get rich off of fraudulent cases? In the end, we'll all pay for it when insurance rates grow sky high. You've worked so hard to build something with your family, to create jobs and to do right by your community and give back. And one lawyer can take all of that away with false claims. It makes you wonder if it's all really worth it to work so hard to build a business. ■