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IN THIS ISSUE

Strengthening Texas Courts..... 1
 Alan Waldrop Sworn In..... 2
 New Supreme Court Justice 3
 TLR's Chief Strategist 4
 TLR Around the State..... 4
 Multi-District Litigation 5

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 13,000 supporters is to make Texas the Beacon State for Civil Justice in America.

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The Next Step: Strengthening Texas Courts

All of us in Texans for Lawsuit Reform can be proud of our contributions to the sweeping civil justice reforms that have been enacted into law over the past decade. While there is still serious work ahead of us on a number of fronts, including statutory reform, the TLR-inspired legislative enactments of recent years have taken the Texas civil justice system from one that was deeply feared and widely ridiculed to one that now has a statutory basis for fairness and predictability.

We are mindful that statutory law is only one factor in establishing a fair and balanced litigation environment. Even the best of statutes are helpful only if judges interpret and apply them appropriately; only if our state attracts and retains judges who are decisive, competent, and honest; only if our courts have adequate administrative budgets; only if our judicial system is efficiently organized and operated so that litigants can get their cases resolved at the earliest possible time with the least amount of expense; only if all of our citizens who are summoned to jury service respond to that call to service; only if jurors are chosen in a truly impartial manner; only if trials are conducted in a way that eliminates gamesmanship and manipulation; and only if professional ethics are tightly crafted and vigorously enforced.

Therefore, TLR will give increasing attention to judges, court administration, trial practices, and the enforcement of legal ethics. We will conduct exhaustive research. We will talk to judges, former judges, trial practitioners, academics, persons who have served on juries, and people who have been parties to litigation. We will study the best statutes, rules, and practices in other states. Our goals will be to assure that the Texas bench is uniformly occupied by the best possible jurists; that the court system is appropriately organized and funded; that trials are conducted efficiently and fairly; that the juries hearing cases are truly representative of our citizenry; that jury service becomes a more positive experience for our citizens; and that Texas adopts enforcement mechanisms to better assure honesty and professionalism in the legal practice.

Future *TLR Advocates* will contain articles on specific issues and proposals concerning Texas courts and the conduct of litigation in our state. All of us in TLR can look forward to this constructive emphasis on courts, lawyers, and trials.

Richard J. Trabulsi, Jr.
President

Alan Waldrop Sworn In as a Justice on the Texas Third Court of Appeals

Alan Waldrop, who has been TLR's lead outside counsel for many years, was appointed by Governor Rick Perry to a seat on the Texas Third Court of Appeals in Austin. In appointing Alan to fill the vacancy caused by the death of Justice Mack Kidd, Governor Perry observed: "Alan's conservative judicial philosophy and his remarkable legal experience will make him an outstanding justice." Alan's investiture was on October 4, and he will stand for election next year to fill a full six-year term.

TLR Regional Co-Chairman, Bud Shivers of Austin, called attention to the importance of the Third Court of Appeals: "This Court hears all appeals – criminal and civil – emanating from the trial courts of Travis County, the seat of Texas government, as well as 23 other central Texas counties. Additionally, the Third Court hears appeals from the state's administrative agencies. For these reasons, this Court is one of extraordinary importance and influence. All of the people of Texas are fortunate to have a lawyer of Alan's ability serve on the Third Court of Appeals."

Dick Trabulsi, President of TLR, who has worked shoulder to shoulder with Alan through several legislative sessions, commented: "I will greatly miss Alan, personally and professionally. TLR's loss of Alan's incisive legal mind, prodigious intellectual capacity, and unique ability to articulate arcane and difficult legal concepts is the judiciary's gain. Alan made an incalculable contribution to the success of civil justice reforms in Texas, and we in TLR are deeply grateful to him."

TLR's Chairman and CEO, Dick Weekley, noted: "Alan's contributions to developing and negotiating the nation's most comprehensive civil justice reform (HB 4 in 2003) and Texas' cure for the pervasive abuses in asbestos and silica litigation (SB 15 in 2005) were without parallel. Alan earned the respect of both Republicans and Democrats in the Texas House and Senate because of his knowledge, accessibility, and tireless efforts to explain the merits of the proposed reforms."

"Alan has wanted to be a judge for as long as I have known him," said TLR General Counsel, Hugh Rice Kelly. "Alan brings to the bench extensive experience as a litigator, a legislative advocate, and a statutory draftsman. He has a reputation

in the litigation bar of being honest, straightforward, hard working, fair, and exceptionally effective. Most importantly, he is careful to consider – and balance – all sides of an issue, a valuable quality in a trial attorney. As a result, plaintiff and defense lawyers alike respect and trust him. He will make a great judge."

Leo Linbeck, Jr., TLR's Senior Chairman, commented: "Alan has been an essential member of the TLR team. As much as we hate to lose his services to our organization, we appreciate that Alan, who has the range of experiences, wisdom, and temperament to be an outstanding jurist, has chosen a career of service to the people of Texas. We are a better state for it."

Justice Waldrop received his undergraduate degree from the University of Texas at Austin where he was a member of Phi Beta Kappa. He graduated with honors from the University's Law School, where he was a member of the Order of Barristers, a national organization that recognizes exceptional advocacy abilities of law students. Following law school, Alan clerked for Federal District Judge Walter Smith of Waco. He has been a partner in Locke Liddell & Sapp and was an adjunct professor in trial advocacy at UT Law School. Alan and his wife, Debra, live in Austin and have two young sons.



Dick Trabulsi and Justice Alan Waldrop.



Alan & Debra Waldrop with Julie & Lee Parsley.



Bruce Gibson, Robert Miller and Hugh Rice Kelly.



Mary Tipps, Supreme Court Justice Don Willett and Stacy & Mike Toomey.



Third Court Justices Bob Pemberton and David Puryear.

Former Special Assistant to President Bush Now Serving on Texas Supreme Court

Governor Rick Perry recently appointed Don Willett as the newest justice of the Texas Supreme Court, replacing Priscilla Owen, who joined the U.S. Court of Appeals for the Fifth Circuit. Justice Willett has a wide range of experience in law and state and federal government.

Justice Willett brings to the Court a conservative judicial philosophy that respects the will of the people as embodied in the laws enacted by the people's representatives. As Justice Willett recently told the *TLR Advocate*, "Good judging, at bottom, is anchored in a great renunciation, a refusal to infuse the law with content not embodied in a democratically enacted statute or constitutional provision."

TLR General Counsel, Hugh Rice Kelly, comments, "Don Willett has an accomplished career, including service in government that brings a very valuable perspective to the Court. His legal philosophy matches the great traditions of Texas jurisprudence that laws should be followed as written by the Legislature; that their application should conform to legislative intent; that common law precedent should be respected; and that wisdom in deciding constitutional cases begins with the principle of judicial restraint."

Before assuming the bench, Justice Willett was Deputy Texas Attorney General for Legal Counsel, where he served as chief legal adviser to Attorney General Greg Abbott on the complete array of major legal issues confronting Texas. Prior to that, Justice Willett was Deputy Assistant Attorney General for Legal Policy at the U.S. Department of Justice, where he played a key role in President George W. Bush's judicial selection process. He also supervised numerous civil and criminal justice initiatives, such as crafting the landmark PROTECT Act of 2003 to protect children from abduction

and exploitation. Before joining the Justice Department, Willett served in the White House as Special Assistant to the President.

Justice Willett earned a triple-major BBA from Baylor University and his J.D. with honors along with an M.A. in political science from Duke University. At Duke, he was Senior Editor of *Law & Contemporary Problems* and Editor of the *Duke International & Comparative Law Annual*. Justice Willett served as law clerk to Judge Jerre S. Williams of the U.S. Court of Appeals for the Fifth Circuit. He then practiced employment/labor law in the Austin office of Haynes & Boone and also handled significant pro bono matters for various non-profit legal foundations.

Justice Willett, a native Texan, has a long history of community involvement, including service on the Texas Commission on Volunteerism & Community Service and the Texas Commission on Judicial Efficiency. His board and non-profit service includes the National Fatherhood Initiative, Big Brothers Big Sisters of Central Texas, SafePlace, the Texas Lyceum Association, and the Baylor University Council for Institutional Development.

TLR Regional Co-Chairman, Dr. David Teuscher of Beaumont, praised Governor Perry's appointment of Don Willett to the state's highest bench, commenting: "Once again Rick Perry has chosen for the Supreme Court a person of unquestioned ability and integrity, a person whose judicial philosophy recognizes that language, history, tradition and precedent provide important safeguards against a judge's substituting his personal notion of what is good for that which the constitution or statute demands."

TLR Around the State

TLR supporters, consultants, and staff have been busy, as usual.

We had a strong presence at the 6th Annual Texas Conference for Women in Austin, which was sponsored by Governor Rick and Mrs. Perry. The goal of the conference is to give Texas women of all generations and backgrounds the tools to successfully navigate their future with confidence. At the TLR luncheon table were Billie Hopson, Brenda Strama, Debra Waldrop, Arlene Wohl-gemuth, Michelle Wittenburg, Connie Scott, Toni Barcellona, Mary Tipps, and Diane Trabulsi. Beverly Kishpaugh and Glenda Hovey manned the TLR booth at the conference and recruited new supporters for TLR. Thanks, Beverly and Glenda, for your hard and good work.



Billie Hopson, Toni Barcellona, Michelle Wittenburg, Glenda Hovey, Arlene Wohl-gemuth, Debra Waldrop, Diane Trabulsi and Connie Scott.

TLR will also be engaged in the upcoming American Business Women's Association conference in Grapevine, Nov 9-12, and the Federation of Republican Women conference in Corpus Christi, Nov 11-13. Ken Hoagland of TLR will attend the American Tort Reform Association (ATRA) Annual Legislative Conference in Atlanta, Nov 14-16.

As the TLR Political Action Committee prepares to engage in the 2006 election cycle, we will have PAC fundraisers throughout the state, starting with Dallas on November 1 and Houston on November 16.

All of us in TLR are mindful of the devastation caused to our fellow Texans in east Texas by Hurricane Rita. Dr. David Teuscher, TLR Regional Co-Chairman, in Beaumont, tells us of on-going human suffering and tragedy in the Beaumont area. David himself has suffered serious damage to his home and to the hospital in which he conducts surgery.

TLR'S CHIEF STRATEGIST

Over a decade ago, when Dick Weekley first began to study the lawsuit abuse problem in search of a solution, a friend arranged a breakfast between Dick and a public policy consultant named Denis Calabrese. They became immediate friends and effective allies, teaming up to lay the foundation for Texans for Lawsuit Reform. They have worked side by side ever since, with Dick serving as TLR's CEO and Denis serving as its Chief Strategist.

TLR's leadership calls upon Denis' analytic and strategic thinking to help shape TLR's major policy initiatives. Dick Weekley observes, "Denis is a critical team member in all aspects of TLR activity, including strategy, tactics, message, research, politics, and policy. Even after these many years of working with Denis, I am still awed by the quickness of his mind and the flawless insight he brings to any issue."

Denis has provided public relations, governmental affairs, public policy, and marketing consulting to a wide range of clients, including Fortune 500 companies, non-profit foundations, professional associations, and professional sports franchises. He is widely sought as a litigation consultant, having worked on major mass tort lawsuits such as diet drugs, MTBE, tobacco, breast implants, and lead paint. Denis also has long been active as a consultant in political campaigns for statewide offices, the legislature, Congress, city councils, and issue referenda.



Denis Calabrese

Denis is a graduate of Rice University, with a degree in Economics and an double-major in Political Science.

Decisive Judge Proves the Usefulness of Multi-District Litigation Process

Recent findings by a federal judge have blown the lid off of abusive legal claims and medical diagnoses that the judge says were “manufactured for money.” The proceedings in the federal district court in Corpus Christi confirm the wisdom of two TLR initiatives that have been enacted into law – the establishment of a statewide multi-district litigation (MDL) system in Texas (HB 4, enacted in 2003) and the establishment of sound medical criteria that a claimant must meet before proceeding with an asbestos or silica lawsuit for personal injury (SB 15, enacted in 2005).

Federal District Judge Janis Jack, the federal MDL judge for silica litigation, exposed the egregious abuses that TLR has long asserted are prevalent in asbestos and silica litigation. The fact that many cases were being heard initially by a single judge was a significant factor in exposing the abusive practices. A defense lawyer noted that the ability to get “thousands of plaintiffs in one court and have one judge get information on all of them, you could put the puzzle together.” Now that HB 4 has established a statewide multi-district litigation process for state courts, our Texas MDL judges will have similar opportunities to consolidate appropriate cases for pre-trial motions and to root out abuses in mass tort litigation.

“These diagnoses were driven by neither health nor justice: they were manufactured for money. The record does not reveal who originally devised this scheme, but it is clear that the lawyers, doctors and screening companies were all willing participants.” — Judge Janis Jack

Plaintiff lawyers have filed hundreds of thousands of asbestos-related claims nationwide for persons who have no credible medical evidence of impairment. Some of these lawyers appear to have decided that they could use the same model for filing silica-related claims. When silica cases were consolidated before Judge Jack, she insisted on actual medical evidence to back up the plaintiff lawyers’ claims. After exhaustive hearings, Judge Jack issued a 249-page decision that was harshly critical of the whole process that led to the claims being filed. The targets of her outrage were certain lawyers who filed lawsuits claiming that silica had harmed their clients, as well as the doctors and medical screening companies who “diagnosed” those claimants.

The judge stated the problem succinctly: “It is apparent that truth and justice had very little to do with these diagnoses – otherwise more effort would have been devoted

to ensuring they were accurate. These diagnoses were driven by neither health nor justice; they were manufactured for money. The record does not reveal who originally devised this scheme, but it is clear that the lawyers, doctors and screening companies were all willing participants.”

Judge Jack, in levying fines against the plaintiffs’ firm of O’Quinn, Laminack & Pirtle for its part in supplying occupational and exposure histories to doctors who mass produced

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positive reports for silicosis, observed: “The clear motivation for O’Quinn’s micro-management of the diagnostic process was to inflate the number of plaintiffs and overwhelm the defendants and the judicial system. This is apparently done in hopes of extracting mass nuisance-value settlements because the defendants and the system are financially incapable of examining the merits of each individual claim in the usual manner.”

Many of the silica claimants had previously filed asbestos claims, even though it is extremely rare for a person to have both asbestos-related and silica-related disease. In one group of 100 claimants represented by O’Quinn Laminack & Pirtle, nearly 70% of the claimants had previously filed asbestos claims. Mr. Laminack, in responding to questions by Judge Jack, was “so eager to support the credibility of his silicosis claims that he admitted in federal court that he believed his clients had previously filed fraudulent asbestos claims.” (*The Wall Street Journal*, August 31, 2005)

“Janis Jack was the first federal judge to pull on a thread that unraveled a complex national web that existed for decades in asbestos litigation and was being transported to silica litigation,” observed TLR Regional Co-Chairman, Mike Scott, of Corpus Christi. “Judge Jack is a good example of how important it is to have strong, fair, and competent judges on the bench who will act decisively and intelligently.”

“Sunlight is said to be the best of disinfectants.”

— *Mr. Justice Louis Brandeis,*
U.S. Supreme Court