

SUMMER 2020

# ADVOCATE

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

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### OUR MISSION

Texans for Lawsuit Reform is a volunteer-led organization working to restore fairness and balance to our civil justice system through political action, legal, academic and market research, and grassroots initiatives. The common goal of our more than 18,000 supporters is to make Texas the Beacon State for Civil Justice in America.

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## The Supreme Court of Texas: One of the Most Distinguished Courts in America

By Lee Parsley, TLR General Counsel

Since the election of **Tom Phillips** and **Nathan Hecht** to the Supreme Court of Texas in 1988, the court has become one of the most respected and influential in America. Tom Phillips retired as chief justice after 16 years, leaving a court that he helped establish as a bastion of intellectualism and judicial scholarship. He was succeeded by **Wallace Jefferson**—the court’s first African American chief justice—who for nine years helped maintain the court’s stellar reputation. Nathan Hecht, our state’s longest serving judge, was elevated to chief justice in 2013 upon Jefferson’s retirement. He has been active in enhancing the administrative efficiency of our entire judiciary and is a passionate advocate for providing legal services to low-income Texans.

While the jurists who have occupied the court’s other eight seats have changed over the past 30 years, the court has consistently been comprised of well qualified—and mostly *exceptionally* qualified—men and women. U.S. Senator John Cornyn served on the court, as did Gov. Greg Abbott. Two former justices now serve on the U.S. Fifth Circuit Court of Appeals and three as U.S. district judges.

The court delivers about 100 opinions a year. It takes cases that involve important issues of law or matters of “first impression,” and cases to correct errors in the lower courts. Since 1988, the court has been a model in strictly applying the words of statutes and constitutions to decide the cases before it, in contrast to activist courts that act as policymaking bodies, usurping the legislative branch of government.

Of course, much of our law in America is “common law” in the British tradition—that is, law established over time as real-world cases are decided and legal opinions are written by our judges. As the highest civil court in the second most populous state in the U.S., the Supreme Court of Texas has great power to impact the development of the common law—for better or worse—and maintain the appropriate balance between the executive, legislative and judicial branches of government. It has excelled in this work, too, creating a body of common law in Texas that is thoughtful, well-reasoned and appropriate to the times.

We are fortunate that our Supreme Court is fair, honest and competent. Four of its justices are on the ballot this year: **Nathan Hecht**, **Jeff Boyd**, **Brett Busby** and **Jane Bland**. Please pay attention to these and all judicial races on the November ballot.

## Supreme Court Spotlight

*Gov. Greg Abbott made two appointments last year to fill vacancies on the Texas Supreme Court—Justices Jane Bland and Brett Busby. Both are exceptionally competent and experienced jurists, each having served for a number of years on the bench before being elevated to our state’s highest civil court.*



*Justice  
Jane Bland*

Before her appointment to the Texas Supreme Court, **Justice Jane Bland** served as a justice on Texas’ First Court of Appeals in Houston for 15 years and as district judge of the 281<sup>st</sup> Judicial District in Harris County for six years. She ranked

first in the 2018 State Bar Judicial Preference Poll and the 2018 Houston Bar Association Judicial Preference Poll among all judges. She also received the highest number of “well-qualified” votes on the First Court of Appeals since joining it in 2003. Prior to her service on the bench, she was an attorney at Baker Botts LLP and clerked for Judge Thomas Gibbs Gee on the U.S. Fifth Circuit Court of Appeals.

Bland received bachelor’s degrees in accounting and honors business and a law degree from The University of Texas at Austin, where she served as an editor of the *Texas Law Review* and a member of the Order of the Coif.

She has received the prestigious William H. Rehnquist Award, which is conferred annually by U.S. Supreme Court Chief Justice John Roberts to the state court judge who “exemplifies the highest level of judicial excellence, integrity, fairness and professional ethics.” The Texas Association of Civil Trial and Appellate Specialists twice named Bland the Appellate Judge of the Year and Trial Judge of the Year on another occasion.



*Justice  
Brett Busby*

Prior to his appointment to the Texas Supreme Court, **Justice Brett Busby** served for six years as a justice on Texas’ Fourteenth Court of Appeals in Houston, where he earned the respect of the attorneys who appeared before his court, receiving 75 per-

cent of the vote in the Houston Bar Association’s 2018 Judicial Preference Poll.

Busby received a bachelor’s degree in public policy studies with high honors from Duke University and a law degree from Columbia Law School. Following law school, Busby worked as a law clerk for Judge Gerald Bard Tjoflat on the U.S. Court of Appeals for the Eleventh Circuit and as a law clerk for Justices Byron White and John Paul Stevens on the U.S. Supreme Court.

Busby is an adjunct professor at The University of Texas Law School and a former partner in the appellate group at Bracewell LLP. In private practice, he gained substantial experience representing parties in complex commercial disputes before the U.S. and Texas Supreme Courts, expertise that is invaluable now in his role as a justice on the state’s highest civil court. ■

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*“All the great things are simple, and many can be expressed in a single word: freedom, justice, honor, duty, mercy, hope.”*

*—Winston Churchill*

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**Curious about how COVID-19 is affecting the Texas legal system and liability issues in general? We explore this and more in TLR’s blog, *For the Record.***

**Visit [www.tortreform.com/for-the-record](http://www.tortreform.com/for-the-record).**



## The “Texas Plan” for Selecting Judges

*In March, TLR participated in a meeting of the **Texas Judicial Selection Commission**, which has been charged with studying the way we select judges to serve in the Lone Star State. This issue has been a longtime concern for TLR, and the TLR Foundation issued a report on judicial selection in the 50 states last year. TLR has considered the various systems used by the states to select judges and, together with the Texas Civil Justice League, developed a unique “Texas Plan,” the components of which **TLR Chairman Dick Trabulsi** presented to the commission earlier this year:*

Texans for Lawsuit Reform and the Texas Civil Justice League are here today to suggest a uniquely Texas plan that will make qualifications the basis for selecting judges, and will make *performance* on the bench—or lack thereof—the basis for removing judges.

TLR has consistently advocated for a qualifications-based appointment system of judges. In our advocacy to the Legislature way back in 2007, we said, “When we select and remove judges based on popular, partisan and largely uninformed votes, we are requiring our judges to perform their job based on one set of standards—that is, impartial, apolitical, protective of minority rights—and selecting or removing them on an entirely contradictory set of standards—that is, the votes of a political majority whose turnout and voting is largely driven by *non-judicial* issues and *non-judicial* races higher on the ballot.”

Twelve years later, in 2019, the TLR Foundation issued a report on judicial selection, and its introduction stated, “A judge is to apply the law objectively, reasonably and fairly—therefore, impartiality, personal integrity, and knowledge of and experience in the law should be the deciding factors in whether a person becomes and remains a judge. A judicial selection system should make *qualifications*, rather than personal political views or partisan affiliation, the paramount factor in choosing and retaining judges.”

Democrat chief justices of the Texas Supreme Court Robert Calvert and John Hill advocated for moving away from the election of judges, and so have the three most recent chiefs, each of them elected as Republicans—Nathan Hecht, Wallace Jefferson and Tom Phillips.

The “Texas Plan” of Judicial Selection that we propose has the following elements:

**One.** Appointment by the governor of men and women to all state courts for a term of 12 years.

**Two.** A review of the governor’s nominees by impartial, bipartisan, diverse advisory panels, which will rate the nominees as “unqualified,” “qualified,” or “highly qualified.”

**Three.** Confirmation by a majority vote of the Senate. A governor’s nominee cannot assume the bench until confirmed by the Senate.

**Four.** The judge must stand for an up or down “ratification” vote by the people, within a few years of assuming office.

**Five.** We propose enhanced qualifications for judicial office beyond what is currently in the constitution, including the requirement that a nominee for our state’s two highest courts must have previous experience as a judge.

**Finally,** we clarify and enhance various methods of removing judges, for cause, whose performance is failing their important office.

One thing we know for certain is that our proposed plan would prevent the following from happening: In this year’s Democratic primary in Travis County, a woman who has previously run for office as a Republican and who has been sanctioned by two separate judges as a “vexatious litigant,” defeated a respected incumbent trial judge, who happens to be male. In November of 2018, a Democrat on the ballot for the Corpus Christi Court of Appeals defeated a well-qualified Republican candidate. It is normal for a Democrat to win seats on that court, but what was abnormal was that the Democrat was a disgraced trial judge who was convicted of bribery.

No Texas governor would appoint a vexatious litigant or a disgraced lawyer or judge to the Texas bench. No Texan, in my view, would *knowingly* vote for such a candidate. But that does not prevent vexatious litigants and disgraced judges from being elected or reelected today. Voters simply do not have, and quite literally cannot acquire, sufficient information about judicial candidates to cast informed votes. That is why our judicial selection system must change. ■

# Valor and Gallantry: Honoring Former Texas Supreme Court Justice Phil Johnson

*The following excerpted remarks were delivered by Texas Supreme Court Chief Justice Nathan Hecht at the retirement, or “swearing-out,” ceremony of fellow Justice Phil Johnson. We think them a fitting tribute to a dedicated public servant who exemplifies the highest ideals of our state and nation:*

Inside the court, we refer to the investiture of new members as their “swearing-in” and the tribute paid to members leaving us as their “swearing-out.” It is my privilege today to swear out Justice Phil Johnson.



*Justice  
Phil Johnson*

third-highest personal decoration for valor in combat and gallantry in action against an enemy of the United States. Webster defines *valor* as “the state of mind with which a person faces danger or hardship boldly or firmly.” *Gallantry* is defined as “courageous behavior, especially in battle.” Valor and gallantry are the qualities of heroes. But *gallantry* has a second meaning, to which I will return momentarily.

After being honorably discharged from the Air Force, Phil began a civil trial practice at the Lubbock firm of Crenshaw, Dupree and Milam. The Panhandle Plains are what many outsiders expect of Texas: vast and rugged, intrigue and legend hidden in its plains and canyons. The people are by nature fiercely independent, conservative and

**Phil Johnson** is a war hero. He served our country as a captain in the Air Force, flying F-100 fighter-bombers during the Vietnam War. He was awarded the Distinguished Flying Cross, the Republic of Vietnam Cross of Gallantry and the Silver Star, the armed forces’

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*“The people [of the Panhandle] are by nature fiercely independent, conservative and genuinely polite.*

*Phil was in that mold—a firm, forceful, and successful trial lawyer, but unfailingly civil and professional.”*

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genuinely polite. Phil was in that mold—a firm, forceful, and successful trial lawyer, but unfailingly civil and professional.

Phil’s broad experience and established reputation for integrity made him an easy choice for the bench—for the people in 1998, who elected him to the Amarillo Court of Appeals and four years later elected him chief justice of that court—and then for Gov. Perry, who appointed Phil to the Supreme Court in 2005.

Over the years, Justice Johnson wrote 140 opinions for the Supreme Court. No justice worked harder than Justice Johnson. He was always completely current.

Now I said at the beginning that gallantry, for which Phil was decorated with the Silver Star, has another definition besides bravery. The word also means “polite attention or respect given by men to women.” See if you think it fits Phil. At the medal ceremony on Reese Air Force Base, two Silver Stars were awarded, one to Phil and a second, posthumously, to the widow of an airman who had been killed in battle. When Phil got home, he found that he had gotten the other airman’s citation by mistake. He called the widow and arranged a switch. Not long after that, she and Phil married. Phil and Carla are a love story if ever there was one. They have five children. At bar and judicial functions, on the campaign trail, wherever you see Phil, you’re likely to see Carla, and most likely, to see them holding hands.

Gallantry is not limited to a man’s relationship to a woman. More generally, the word means gentlemanliness, graciousness, respectfulness, courtesy, attentiveness, considerateness, thoughtfulness. All those have characterized

Justice Johnson’s relationships with everyone at the court. He always gets to know all the law clerks and is a caring friend to the administrative and clerical staff. “PJ,” as they refer to him, is not only highly respected, but much loved.

When Justice Johnson retired last year, my colleague, Justice Jeff Brown, wrote a tribute published in the Houston Chronicle. Justice Brown said:

*Across this great state, in both political parties, there are men and women of the highest character hard at work for the people of Texas. They're the quiet ones, avoiding the spotlight, focusing on good government rather than self-aggrandizement. For those good folks, and for anyone who aspires to the gold standard of public service, Phil Johnson is a guiding light.*

I could not say it better.

Justice Johnson and Carla, I speak for all our colleagues when I say that the court has benefitted from the work we have shared in. We love you, and we will miss you. The people of Texas are in your debt. God go with you. ■



## TLR Speaker's Bureau Brings Tort Reform to You!

Need a speaker for your next event? TLR's Speaker's Bureau has volunteers available across the state to speak at your group's next meeting. These engaging presentations help spread the word about issues that are on TLR's radar, such as commercial vehicle litigation abuse, judicial selection in Texas and more.

*To book a TLR speaker, please visit [www.tortreform.com/tlr-speaker](http://www.tortreform.com/tlr-speaker).*

## Celebrating TLR Team Members of 20 Years



*Glenda Hovey*



*Kristie Vazquez*

2020 has been an interesting year for us all, but amid all the hustle of preparing for the upcoming legislative session and adapting to the fluid situation surrounding COVID-19, we couldn't let the opportunity for a celebration go by.

This year marks the 20th anniversary with TLR for our Houston staff. **Glenda Hovey** and **Kristie Vazquez** both joined TLR in 2000, making them our longest-serving staff members (you'll recall we celebrated TLR Executive Director Mary Tipps' 15th anniversary with TLR last year).

Glenda serves as TLR's administrative director, working behind the scenes to keep operations running smoothly by ensuring the day-to-day administrative duties are done. She also works closely with Kristie to maintain TLR's vast database.

Kristie is director of support services, and serves as data manager in the Houston office. She also manages TLR's Speaker's Bureau program, which connects TLR volunteers with organizations interested in learning more about how lawsuit reform has helped strengthen our state economy and keep our courts fair and efficient.

"TLR is blessed to have Glenda and Kristie on our team, two of the most delightful, genuine, competent, and dedicated individuals you can imagine," **TLR Senior Chairman Dick Weekley** said. "When you see one of them in the morning, it always brightens your day."

"Glenda Hovey and Kristie Vazquez are TLR's hidden treasures, and a special blessing to me since I oversee TLR's administrative operations," **TLR Chairman Dick Trabulsi** said. "Glenda and Kristie are dedicated, diligent and exceptionally capable, performing their duties competently and dependably. I am particularly grateful for Glenda's and Kristie's personal traits. Each, in her own style, is cheerful, interesting and engaging. Both are committed to TLR's mission and are happy warriors in the pursuit of it. They are a joy to work with, and I am grateful to have these good women at my side and on our team." ■

# Access to Justice: Enhancing Justice for Low-Income Texans

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*“Access to justice for all is a righteous cause. It is humanitarian, it is good for the economy, and most importantly, it is essential to the integrity of the rule of law.”*

*-Chief Justice Nathan L. Hecht, Supreme Court of Texas*

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## MISSION & GOALS

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*The Texas Access to Justice Commission, created by the Supreme Court of Texas in 2001, is charged with developing and implementing initiatives to expand access to and enhance the quality of justice in civil legal matters for low-income Texans.*

### **Specifically, the commission aims to:**

- » Identify and assess current and future needs for access to justice in civil matters by low-income Texans.
- » Create a framework for equitable access to justice by promoting policies, procedures, court rules and legislation that reduce barriers to our judicial system.
- » Increase resources and funding for access to justice in civil matters.
- » Promote wise and efficient use of available resources and encourage the coordination or sharing of resources or funding.
- » Develop and implement other initiatives designed to expand civil access to justice, such as assisted *pro se* programs, strategic use of technology, and enhanced community education.
- » Monitor the effectiveness of the statewide system and services provided.

### **All Texans deserve fair and equitable access to our justice system.**

- » Civil legal aid ensures fairness for all in the court system, regardless of income.
- » Approximately **5.6 million Texans** qualified for legal aid before the COVID-19 pandemic. This number is expected to rise as unemployment has increased. Texas has the second-highest number of low-income people in the nation. To qualify for legal aid, a person

must not earn more than **\$15,950 per year**. A family of four must not earn more than **\$32,750 per year**.

- » Many need help with critical civil legal issues impacting their very existence, such as spouses and children of **domestic abuse**; **elderly** wrongly denied life-sustaining prescriptions; **veterans** denied critical medical care, disability and other benefits; and families who have **lost their homes**. Employment issues are expected to rise as an area of essential legal aid.

### **The Texas Supreme Court, Texas Legislature and Texas lawyers have helped fill the gap in funding for civil legal services and increased access to justice for all.**

- » Through a tremendous show of bipartisan support and the outstanding efforts of the Texas Supreme Court, the 86th Legislature appropriated **\$20 million for civil legal aid, \$10 million for survivors of sexual assault and \$6 million for veterans** for the biennium in its baseline budget.
- » Texas lawyers provide nearly three million hours in **free or indirect legal services to the poor, valued at more than \$564 million** annually, according to the 2017 State Bar of Texas Pro Bono Survey. Organized pro bono programs take place ‘in-house’ at local legal aid programs, through local bar association projects and through other collaborative efforts. Additionally, attorneys have given **millions of dollars in private donations**.

*“People need to understand better what legal services does. There are studies in Texas and other states about the contribution it makes to the economy, by helping people deal with their legal problems and get on their feet and be productive.*

*It’s good for the justice system. You can’t just be for the rich folks.”*

*-Chief Justice Nathan Hecht, Texas Lawyer, March 2017*

# Commercial Vehicle Litigation by the Numbers

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*As we've all seen in the past few months, our wellbeing depends on commercial vehicles delivering services and goods to distribution centers, retail outlets and our front doors. It's big business and it is essential. Unfortunately, lawsuits against commercial vehicle owners and operators have also become big business for the cadre of plaintiff lawyers who are endlessly searching for another big payoff.*

*Commercial vehicle litigation is reaching a tipping point that, unless addressed by the Texas Legislature, will result in business failures, increased costs of doing business for the companies that survive, and increased costs for the goods and services we all need. We simply can't allow these essential businesses to continue serving as punching bags for personal injury trial lawyers.*

## ***Defining the Players***

Commercial vehicles fall into a number of classes, from minivans used to deliver flowers to big rigs that carry goods across the nation. Some must register with the Texas Department of Transportation (TXDOT), but many do not. Of those registered with TXDOT, a great majority are small, “mom and pop” operations. In fact, nearly 88 percent of active carriers registered in Texas operate 10 or fewer vehicles. We believe many of the commercial vehicles that are not registered with TXDOT are also operated by small businesses, providing services that range from swimming pool cleaning to pest control. These are small business owners doing their part to create jobs and make a living. And all of them are targets for personal injury lawyers because they all have deep pockets.

Yes, even the mom and pop operators of commercial vehicles have “deep pockets” because a commercial vehicle operating in Texas must carry a substantial amount of liability insurance, ranging from a minimum of \$300,000 to a maximum of \$5 million. Many carry more insurance than the minimum, with layers of insurance reaching into the multi-millions.

In addition to having a substantial amount of insurance available to pay crash-related damages, many companies running commercial vehicles have tangible assets that can be subject to judgments. In other words, through insurance and their own assets, these companies have deep pockets, which are irresistible to personal injury trial lawyers.

## ***Trial Lawyer Targeting of Commercial Vehicles is Working***

Personal injury trial lawyer ads seeking clients to file car crash lawsuits are ubiquitous on television, in newspapers and on billboards. Many of the advertisements specifically seek clients to sue owners and operators of commercial vehicles. The advertising seems to be working.

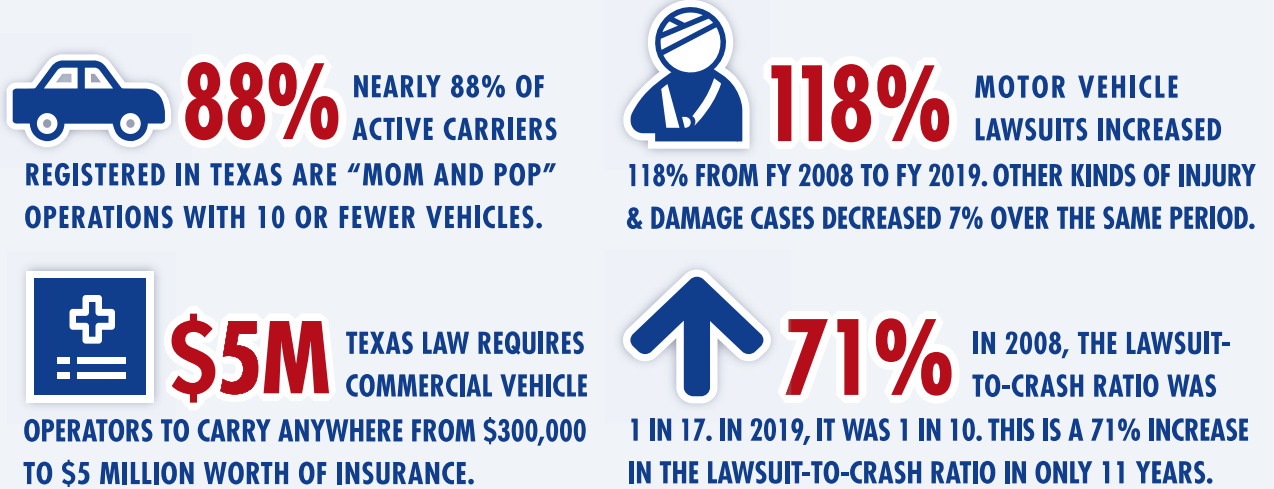
Motor vehicle litigation is increasing in Texas, while other kinds of personal injury litigation are decreasing. According to the Texas Office of Court Administration, the number of motor vehicle lawsuits has increased steadily since fiscal year 2008, *climbing 118 percent* from fiscal year 2008 to fiscal year 2019. During the same period, other kinds of injury and damage cases *decreased* seven percent.

In addition to an increase in the number of lawsuits involving a motor vehicle of any kind, the lawsuit-to-crash ratio is increasing over time. *By 2019, Texas had reached the point that a lawsuit was filed in about one out of 10 vehicle crashes.* Just 11 years earlier, in 2008, the lawsuit-to-crash ratio was one in 17. This is a *71 percent increase* in the lawsuit-to-crash ratio in only 11 years. Anecdotal information we have received indicates the lawsuit-to-crash ratio may be closer to one in five if a large truck is involved.

Based on the data, it appears Texas is moving toward a litigation environment in which a collision with a truck—no matter who is at fault and no matter the severity of the event—is an opportunity to hire a plaintiff's lawyer promising riches. That is simply not a place we can afford to go.

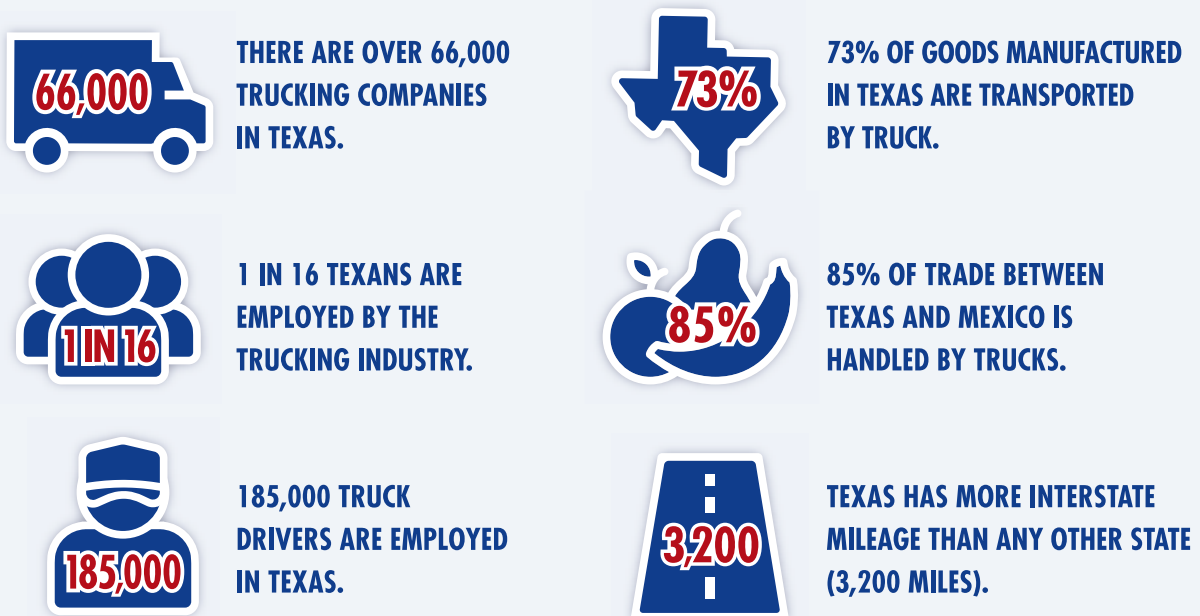
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## Breaking Down Commercial Vehicle Litigation in Texas



*Source: Texas Department of Motor Vehicles, Office of Court Administration, Texas Department of Transportation.*

## Trucking's Contribution to the Texas Economy



*Source: Texas Department of Transportation*