

# AMICUS CURIAE COMMITTEE

## SEMI-ANNUAL REPORT

By Roger Hughes, Chair  
Adams & Graham, L.L.P., Harlingen

The last quarter has been less active for the TADC amicus curiae committee than previous quarters, but there have been some big decisions.

Scott Stolley (Thompson & Knight) submitted an amicus brief in support of the motion for rehearing in *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 434 (Tex. 2009). This is a case concerning OCIP (Owner Controller Insurance Program). Fred Raschke (Mills Shirley LLP) submitted an amicus brief in *HCBeck, Ltd. v. Rice*, 284 S.W.3d 389 (Tex. 2009). This is a case about whether a general contractor in an OCIP is a statutory employer of the subcontractor's employees and thus entitled to assert the exclusive remedy bar. The Supreme Court denied the motions for rehearing without a new opinion.

Brendan McBride (Prichard, Hawkins, & Young) and Mike Eady (Thompson Coe) submitted TADC's amicus brief in support of the petition for review in *Galbraith Engr. v. Pochuca*, \_\_\_ S.W.3d \_\_\_, 2009 WL 1841594 (Tex. 2009). Tom Nye (Viduarri, Lyde, Gault and Quintana) argued for Petitioner. The Court held that the 10 year statute of repose for engineers trumped TCPRC §33.004 which gives plaintiff a 60 day window to sue responsible third parties. The statute of repose barred bringing in the engineers as responsible third parties.

Roger Hughes (Adams & Graham) and Ruth Malinas (Ball & Weed) to submit TADC's amicus brief in support of petitioners in *In re Baylor Med. Ctr. at Garland*, \_\_\_ S.W.3d \_\_\_, 2009 WL 1901642 (Tex. 2009) and *In re Columbia Med. Ctr of Las Colinas*, \_\_\_ S.W.3d \_\_\_, 2009 WL 1900509 (Tex. 2009), both mandamus cases. Brent Cooper (Cooper & Scully) argued for Petitioners in both cases. In a ground breaking decision, the Court held that an order granting a new trial had to state the specific grounds and a failure to do so could be reviewed by mandamus. This hints that the grounds for granting a new trial may be reviewed by mandamus.

Brent Cooper (Cooper & Scully) has been authorized to file an amicus brief to support relator in "In re Scoggins Constr. Co." Case No. 08-0544. This is a mandamus petition from a construction contract dispute; the trial court denied the general contractor leave to join the subcontractors for indemnity or as responsible third parties. The issues are (1) is it an abuse of discretion to deny leave to file third party suits to sue subcontractors if their defective work is the basis of the claim against the general contractor, (2) whether it is an abuse of discretion to deny leave to designate them as responsible third parties, and (3) are the potentially inconsistent verdicts in separate lawsuits an irreparable harm or does Scoggins have an adequate remedy by appeal? The Supreme Court granted leave to file the petition; oral arguments were heard on October 8, 2009.

