



TADC *e-Update*
The Texas Association of Defense Counsel, Inc.

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FROM THE PRESIDENT

Greg W. Curry, Thompson & Knight, L.L.P.; Dallas



It's hard to believe that it's March already! The TADC has had an active 50th year thus far with the successful completion of the 19th installment of the TADC Winter Seminar, held in Vail, Colorado, January 28-31. The outstanding program assembled by Program Co-Chairs Gayla Corley with Langley & Banack, Inc. and Troy Glander with Davis, Cedillo & Mendoza, Inc., both in San Antonio, included presentations on the uses of Expert Witnesses, Trial Tactics and a comprehensive Legislative Update. Special guest speakers included Karen Wheeler, Past President of the Colorado Defense Lawyers Association and Connie King, former Corporate Counsel now in private practice in Colorado Springs.

We now set our sites on the 28th Annual Trial Academy, scheduled for April 23-24, 2010 in Galveston, Texas. This is one of TADC's premier programs. Experienced trial attorneys and judges serve as faculty and over the span of two days, students practice opening and closing statements, cross and direct examinations, voir dire and many other practical courtroom techniques. Participants will be attending the seminar in the Galveston County Justice Complex and will use actual courtrooms for their breakout

sessions. I would highly encourage you to attend if you are a new lawyer licensed 1-6 years, and if you are a senior member in your firm, to send your younger associates. This program is outstanding and there is no better value in the country for the amount of training and education attendees receive. More information and registration links are below.

Following the Trial Academy, the 2010 TADC Spring Meeting will take place in San Diego at the Hotel del Coronado, April 28-May 3, 2010. Program Co-Chairs Carol Traylor with Cantey Hanger, L.L.P. in Fort Worth and Greg Blaies with Blaies & Hightower also in Fort Worth have generated a program with over 11 hours of legal education including 2 hours of ethics credit. Special guest speakers include TADC member and current President of the Texas State Bar, Roland Johnson with Harris, Finley & Bogle, P.C., in Fort Worth, who will speak on Lawyer's Creed Issues and David Freeman with the Freeman Consulting Group who will discuss Business Development for the Trial Lawyer.

I end my remarks by asking you to recruit a member. The TADC is the premier organization of its kind in the United States. There is no other group in Texas representing your interests as Defense Trial Counsel and no better value for your dollar. The business development opportunities are fantastic as is the education and representation of the defense bar before the legislature. If you have not yet renewed your membership, do it today. If you know someone who is not a member of TADC and should be sign them up! [CLICK HERE](#) for a membership application. We remain strong as an organization through the dedication of the membership!

I hope to see everyone in San Diego!

LEGISLATIVE/ELECTION NEWS

The March2 primary election produced a few surprises but no major changes to the statewide and legislative lineups. Most incumbents won re-election, and most of them won relatively handily. The much-ballyhooed "Tea Party" movement appears not to have resulted in the election or defeat of any particular candidate, though it did have a significant local effect in a few races. When all is said and done, however, there will likely be no appreciable change in the legislative leadership.

As you no doubt know, Governor Rick Perry won the Republican primary outright, easily outdistancing Sen. Kay Bailey Hutchison and upstart Debra Medina.

This race undoubtedly spurred the highest GOP primary turnout in Texas history, with nearly 1.5 million votes (the Democrats, by contrast, only mustered a few more than 600,000). Number crunchers have determined that somewhere around 11 percent of the total Republican primary turnout actually consisted of people who had always previously voted in the Democratic primary. Another major segment of the electorate was voters who didn't vote in primaries but only the general election. In fact, only about 55% of the early vote in the Republican primary was cast by voters with a history of voting in Republican primaries. Among these voters, independent voters (those who don't vote in primaries) broke big for Rick Perry, while the smaller Democratic crossover broke slightly for Kay Hutchison. Medina seemed to pull a purely anti-incumbent vote that may or may not have had anything to do with the Tea Parties. The only other non-judicial statewide officeholder with opposition, Railroad Commissioner Victor Carrillo, was trounced by unknown challenger David Porter, a CPA who recently lost a Midland school board election and moved to Giddings. Carrillo attributed his loss to his ballot name and the unfamiliarity of GOP primary voters with either candidate.

Republican primary races for the Texas Supreme Court produced little surprise with the exception of Place 3, the open seat. Sitting Justice Paul Green was unopposed in the primary in Place 5 and Gubernatorial appointee Eva Guzman handily defeated opponent Justice Rose Vela from the Corpus Christi Court of Appeals in Place 9. Place 3 produced a field of six candidates. Justices Jim Moseley, Jeff Brown, Rebecca Simmons & Rick Strange from the 5th, 14th, 4th and 11th Courts of Appeals respectively, Judge Debra Lehrmann of the 360th District Court in Tarrant County and former Texas House member turned activist Rick Green from Dripping Springs. At the end of the day, less than 1 percentage point separated the top four candidates. In a somewhat surprising twist, Rick Green, a candidate with no judicial experience and Judge Debra Lehrmann, who has 22 years of experience, most of it coming from family law cases, will face each other in the primary runoff in April. The winner will run against Democrat Jim Sharp in November. The TADC PAC has voted to make a contribution to the Lehrmann campaign.

On the Democratic side, former Houston Mayor Bill White won the Democratic primary without breaking a sweat, although he polled some 200,000 votes fewer than Perry. Linda Chavez-Thompson beat former Travis County District Attorney Ronnie Earle for the Democratic nomination for Lt. Governor, while former State Senator Hector Uribe and rancher Hank Gilbert picked up the nominations for Land Commissioner and Agriculture Commissioner respectively. Going into November, the Democrats will have a reasonably balanced statewide ticket with a proven fundraiser and campaigner at the top of the ticket. Still, most observers believe that the current state of play in Texas and across the country suggests a very successful fall campaign season for the GOP, and that probably goes for Texas as well, but obviously these predictions may not be accurate as the election season unfolds.

In the Texas Senate, incumbents Bob Deuell (R-Greenville), Steve Ogden (R-College Station), and Kip Averitt (R-Waco) easily won re-election. Averitt did not run an active campaign for health reasons and has indicated that he will withdraw from the ballot, allowing the county party chairmen in the Senate district to replace him on the ballot. If Averitt indeed withdraws, the Democratic county chairmen will likewise have the opportunity to nominate a candidate. If Averitt chooses to stay on the ballot, he is unopposed in November. In the only open seat, former El Paso County Attorney Jose Rodriguez won election over two primary opponents to replace outgoing Sen. Eliot Shapleigh.

The House saw a little more action than the Senate. Six House incumbents lost their seats(at least pending recounts in some cases): Tommy Merritt (R-Longview) lost to businessman David Simpson; Betty Brown (R-Terrell) was defeated by her former staffer, Lance Gooden; Dora Olivo (D-Missouri City) fell to Ron Reynolds; Tara Rios Ybarra (D-Harlingen) lost a nasty race to challenger Jose Manuel Lozano(this race was somewhat of a proxy fight between the Texas For Lawsuit Reform, which supported Rios Ybarra, and the Texas Trial Lawyers Association, which backed Lozano); Al Edwards (D-Houston) dropped a rematch to former Rep. Borris Miles (though Miles' margin of victory was a slim 11 votes, guaranteeing are count); and Terri Hodge (D-Dallas), who recently plead guilty to a federal offense and withdrew from the race, duly lost to attorney Eric Johnson. A handful of other House incumbents face run-offs: 46-year incumbent Delwin Jones(R-Lubbock) vs. Charles Perry; Norma Chavez (D-El Paso) vs. Naomi Gonzalez; and Fred Brown (R-College Station) vs. Buddy Winn.

With the March elections out of the way, interim hearings will pick up once more. The House Judiciary and Civil Practices Committee will convene on March 25 to hear testimony on the paid or incurred issue. Dan Worthington will take the lead for TADC at the hearing. On April 29, the contentious issue of the causation standard in asbestos-related mesothelioma cases will take center stage before the committee, followed by a late May hearing on barratry. A joint meeting of the House Judiciary and Civil Practices and House Business & Industry Committees will be held in July to discuss workers' compensation and statutory employer issues.

The TADC was invited by the Texas House Judiciary and Civil Jurisprudence Committee to offer testimony on their interim charge #2, dealing with arbitration in the State of Texas. On January 27, 2010,K.B. Battaglini with Greenberg Traurig, L.L.P. in Houston presented on behalf of the Association. Battaglini advised that arbitration reforms were necessary in order to improve the process for all parties involved. The testimony was very well received and the Committee Chair, Representative Todd Hunter from Corpus Christi, asked that the TADC follow-up with suggested language for the Committee to consider. Your Legislative Committeeis monitoring all interim hearings for anything that might affect the practiceof law.

At its meeting in late February, devoted to its oversight function, the committee heard testimony from the Texas Supreme Court, Court of Criminal Appeals, Office of Court Administration, and Office of the Attorney General. Much of the discussion involved how the agencies were handling the 5% budget reduction requested by the legislative leadership, but Chief Justice Jefferson did address judicial selection and campaign finance issues as well. In light of recent U.S. Supreme Court cases, Justice Jefferson indicated that the Supreme Court Rules Advisory Committee is considering changes to the recusal procedures in trial and appellate courts.

For copies of any testimony presented by TADC during the legislative session or interim hearings and other up-to-date legislative news, visit the members' side of the TADC website (www.tadc.org)

UPCOMING EVENTS

April 23-24, 2010

TADC Trial Academy

Galveston Courthouse/San Luis Hotel
Fred Raschke & Mike Hays, Co-Chairs
[CLICK HERE](#) for registration

April 28-May 2, 2010

TADC Spring Meeting

Hotel Del Coronado – San Diego, California
Carol Traylor & Greg Blaies, Co-Chairs
[CLICK HERE](#) for registration

July 14-18, 2010

TADC Summer Seminar

Westin Los Cabos – Cabo San Lucas, Mexico
Patricia Alvarez & Ed Carlton, Co-Chairs
Registration materials available in late April 2010

August 6-7, 2010

Budget/Nominating Committee

Austin, Texas

September 22-26, 2010

TADC Annual Meeting (50th Anniversary of TADC)

Hyatt Hill Country Resort – San Antonio, Texas
Christy Amuny & Jane Haas, Co-Chairs
Registration materials available in mid-June 2010

SPECIAL PROGRAMMING INFORMATION

2010 TADC TRIAL ACADEMY

April 23-24, 2010

**San Luis Hotel & the Galveston County Justice Complex
Galveston, Texas**

***If you have not yet registered for the TADC Trial Academy, do it today,
space is limited!***

*The Trial Academy is an **excellent opportunity** for 1-6 year lawyers to gain powerful skills in courtroom advocacy and an inexpensive alternative to many other programs.*

The seminar is staffed by seasoned trial attorneys who act as instructors in this intense two-day program. Instruction in Cross & Direct Examination of witnesses, Voir Dire, and Opening & Closing Statements, all in a courtroom setting.

*A young attorney **can earn nearly 1 full year of CLE** at a very reasonable registration fee and the program is outstanding. This year's problem is commercial in nature. **Register now as you will have to study course materials and the problem in advance of the Academy.***

[CLICK HERE](#) for Trial Academy Registration Materials

2010 TADC SPRING MEETING

April 28 – May 2, 2010 – Hotel del Coronado – San Diego, California

Don't miss this Great Meeting [CLICK HERE](#) for Registration

An **11.25 hr** (with 2.0 hrs ethics) CLE Program featuring such topics as:

“SON OF A SAILOR: JURORS HEAR AND SAY THE DARNDDEST THINGS

EVIDENTIARY ISSUES THAT SURPRISE DEFENSE ATTORNEYS“

“ANOTHER DAY IN PARADISE: LAWYERS CREED ISSUES”

**“SITTIN’ ON THE DOCK OF THE BAY: ETHICAL CONSIDERATIONS IN
BUSINESS LITIGATION”**

“LOVELY CRUISE: BUSINESS DEVELOPMENT FOR TRIAL LAWYERS”

And many more!

*San Diego and Coronado Island are amazing destinations with events
and activities for individuals, couples and families!*

**TADC'S GROUP HOTEL RATE AT THE DEL IS GREAT
AND AIRFARES ARE INCREDIBLY LOW RIGHT NOW!**

MEMBERSHIP INFORMATION

REMINDER

*TADC membership dues are due and payable on or before January 1, 2010. If you
have not yet done so, please renew your membership in the largest defense organization
in the country and the ONLY voice of the defense bar in Texas!*

**There will be a special day dedicated to a TADC
Membership Drive - April 1, 2010, and it's no joke!**

The TADC makes membership a priority and is focused on new members, as well as retention of existing members. The Membership Committee is chaired by Jackie Robinson with Thompson & Knight L.L.P. in Dallas and Pamela Madere with Clark, Thomas &

Winters, P.C. in Austin. The extraordinary benefits of being a TADC member are numerous, but include the following:

- Business Development: The opportunity to connect with other similarly situated defense counsel and create an environment that encourages networking between counsel to address issues statewide.
- An outstanding expert bank for members that is cost effective, very efficient and substantive.
- Outstanding CLE – Texas law and Texas topics such as how to reorganize your practice after a major, catastrophic event, i.e., hurricane, tornado, flood, etc.
- TADC's Program Vice Presidents focus on current issues that are relevant and useful for our attorneys' immediate utilization in their practices.
- TADC maintains close contact with and involves its past presidents as motivators for young attorneys and reminds them of the value of friendships which are made by involvement in TADC.
- TADC offers a \$50.00 incentive to each new member and the person who recruited the new member for use at an upcoming TADC CLE. TADC also provides a discount birthday certificate on each member's birthday for use at an upcoming TADC CLE.
- Finally, TADC has a vibrant young lawyers' committee wherein we encourage participation by young attorneys who are future leaders of the organization and the bar.

Take the time to visit with the lawyers in your firm and your colleagues throughout the state and educate them on the benefits to being a TADC member. The voice of the defense bar in Texas is the TADC.

Please join us at TADC activities as we celebrate our 50th Anniversary. And please feel free to contact any TADC Board member for any questions or comments.

[CLICK HERE](#) for a TADC membership and sign up a new member today!

LEGAL NEWS

CIVIL PRACTICE

DLB Architects, P.C. v. Weaver (Tex.App. Dist.5 01/29/2010)

Because Civil Practices and Remedies Code §150.002 applies to appellees' third-party claims against appellants, appellees were required to file an affidavit from a third-party architect at the time they filed their complaint. Consequently, the trial court erred in refusing to dismiss appellees' claim. Dallas Court of Appeals, No. 05-09-00030-CV, 01-29-2010. **TO READ THIS OPINION IN FULL [CLICK HERE](#)**

Garcia v. Garza (Tex.App. Dist.4 02/03/2010)

Texas Rule of Civil Procedure 166a, which governs summary judgments, does not set a deadline for a movant to file a reply to a non-movant's response. According to case law, the movant is entitled to file its reply until the date of the summary judgment hearing. The movant, however, is not entitled to use its reply to amend its motion for summary judgment or to raise new and independent summary judgment grounds. Appellees did not impermissibly raise a new and independent summary judgment ground in their reply brief. San Antonio Court of Appeals, No. 04-09-00163-CV, 02-03-2010. **TO READ THIS OPINION IN FULL [CLICK HERE](#)**

Shook v. Walden (Tex.App. Dist.3 02/18/2010)

Recent decisions may imply that Civil Practices and Remedies Code §41.007 would independently limit or preclude prejudgment interest from being included in the baseline to which chapter 41's multiplier is applied to calculate the current exemplary damage caps. Regardless, the court does not believe that any such limitation deriving from §41.007 would change what the plain text of §41.001's definitions of "compensatory damages" and "economic damages" mean, as they are incorporated into §52.006, subsection (a)(1). Austin Court of Appeals, No. 03-09-00576-CV, 02-18-2010. **TO READ THIS OPINION IN FULL [CLICK HERE](#)**

CIVIL PRACTICE; HEALTH LAW

San Antonio Extended Medical Care, Inc. v. Vasquez (Tex.App. Dist.4 02/03/2010)

The alleged report does not represent an objective good faith effort to comply with the definition of an expert report. Accordingly, the trial court erred in failing to dismiss plaintiff's claims against appellant for failure to timely serve an expert report under Texas Civil Practices and Remedies Code §74.351. San Antonio Court of Appeals, No. 04-09-00546-CV, 02-03-2010. **TO READ**

THIS OPINION IN FULL [CLICK HERE](#)

HEALTH LAW

Ghazali v. Brown
(Tex.App. Dist.2 02/25/2010)

Because laser hair removal is not health care, medical care or treatment, the failure to warn of the risks of the procedure or the negligent performance of the procedure cannot be an inseparable part of the rendition of health care, medical care or treatment. Therefore appellant's claim is not inseparable from the rendition of medical services and is not a health care liability claim. Fort Worth Court of Appeals, No. 2-09-191-CV, 02-25-2010. **TO READ THIS OPINION IN FULL [CLICK HERE](#)**

TORTS

Diaz v. Canutillo Independent School Dist.
(Tex.App. Dist.8 02/03/2010)

At issue is whether negligent parking constitutes the use or operation of a motor vehicle as contemplated by the Texas Tort Claims Act. On the facts in this case, it does not. El Paso Court of Appeals, No. 08-07-00357-CV, 02-03-2010. **TO READ THIS OPINION IN FULL [CLICK HERE](#)**

EMPLOYMENT; GOVERNMENT

Galveston Independent School Dist. v. Jaco
(Tex. 02/12/2010)

In *State v. Lueck*, (Tex. 2009), the Texas Supreme Court held that the elements of Texas Government Code §554.002(a) can be considered to determine both jurisdiction and liability. Accordingly, whether the reporting of a violation of the University Interscholastic League's rules and regulations to the UIL is a good-faith report of a violation of law to an appropriate law-enforcement authority is a jurisdictional question. Therefore, the case is remanded to determine whether, under the analysis set forth in *Lueck*, the employee has alleged a violation under the Whistleblower Act. Texas Supreme Court, No. 09-0195, 02-12-2010 **TO READ THIS OPINION IN FULL [CLICK HERE](#)**

