



# TADC

*e-Update*

The Texas Association of Defense Counsel, Inc.

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## **FROM THE PRESIDENT**

Tom Henson, Ramey & Flock, P.C.; Tyler



TADC is having a busy but productive and successful year thus far.

We held a Board of Directors meeting in San Antonio on January 16-17, with good attendance and active participation in committee meetings; plans were made for all of the year's activities with special emphasis on the upcoming Legislative Day, Supreme Court breakfast, Spring Meeting, membership drive, publications and upcoming programs.

Our Winter Meeting was held January 28-31, with good attendance, an excellent CLE program planned and coordinated by Robert Sonnier, and with abundant snow and great skiing at Steamboat Springs, CO.

TADC's Legislative Day activities took place in Austin on March 4, with a large number of members participating in the visit to the Capitol. The Legislative Reception at the Hyatt Hotel on Lady Bird Lake was very successful, with a large group of attendees including numerous legislators and members of their staffs. Our annual Spring Meeting followed on March 5 & 6, with a large number of attendees participating in the excellent CLE program planned and coordinated by Kurt Kuhn. Our activities included a breakfast honoring present and past members of the Supreme Court of Texas. Our Young Lawyers Committee, chaired by Ken Riney of Dallas, had a major role in both the Legislative Day activities and the Supreme Court breakfast.

With the 81st Legislature opening its Session in early January, our

Legislative Committee and the TADC Executive Committee have been hard at work studying and monitoring the bills which have been filed, visiting with key legislators and their staffs, and pursuing TADC's best interests and the interests of the civil justice system. Further details on legislative activities are mentioned in more detail elsewhere in this E-News.

Coming up next on TADC's busy agenda are its [Commercial Litigation Seminar](#) in Houston on **April 16** and the [TADC Trial Academy in San Antonio April 24-25](#). Make plans to be a part of both events

**Please don't hesitate to contact me or the TADC office if we may be of service.**

## **LEGISLATIVE NEWS**

The TADC continues to monitor and review all bills that have been filed this legislative session which may have an impact on your practice. The pre-filing of bills has ended and there have been over 7,000 pieces of legislation brought forward. The TADC will keep the membership advised as bills begin moving through the process. Please do not hesitate to contact the TADC office should you have any questions about legislation this session. **CLICK** the highlighted bill number below to view the bill.

### **SB 1119 "Paid or Incurred"**

Sen. Hinojosa has introduced SB 1119 which is a bill that seeks to repeal CPRC §41.0105 for all cases except medical malpractice cases. The bill further seeks to clarify that the "paid or incurred" limitation does not apply to future medical expenses. This bill is in substantially the same form as last session when it passed almost unanimously and was vetoed by Governor Perry.

### **SB 1657 "Entergy fix"**

SB 1657 is being sponsored in the Senate by several legislators from both parties. This bill seeks to clarify Section 406.121 of the Texas Labor Code with regard to the definition of "general contractor." The essence of this bill is that it makes clear that a property owner is not a general contractor for the purpose of the Section 406.121 extension of the Workers' Compensation bar for employers. This bill is scheduled to be heard on March 16.

### **HB 198 "Anti-Computer Evaluation bill"**

HB 198 would prohibit insurer from settling or adjusting a claim that includes noneconomic damages without a complete review of the claim by an individual who is authorized to evaluate the claim based on the facts of the claim and the individual's judgment. The proposed legislation also provides that it is an unfair method of competition or an unfair or deceptive act or practice to evaluate a claim that includes noneconomic damages for an insurer to use an artificial intelligence application or other computer software application; or any other method without the complete review of the claim by an individual who is authorized to evaluate the claim based on the facts of the claim and the individual's judgment.

### **HB 600 "JP Appeals"**

HB 600 was filed by Rep. Hughes and provides that the de novo appeal of a judgment of a small claims

court is to a county court or county court at law, and provides for an appeal of a final judgment from a county court or county court at law to the court of appeals

#### **SB 1201 “Professional Liability Affidavit”**

SB 1201 was filed by Sen. Carona and would amend Section 150.002 of the Texas Civil Practices Code. This section relates to the current requirement of an affidavit to accompany a suit against a licensed or professional architect, land surveyor or professional engineer. The proposed change would increase the requirements on the competence of the affiant from someone holding the same license and practicing in the same area as the defendant to also requiring that the affiant establish that he or she is knowledgeable in the area for which they offer testimony, based upon their knowledge, skill, experience, education, training and practice.

#### **HB 1174 “City Sewer bill”**

This bill, offered by Rep. Hartnett, would require that municipalities pay damages arising from the backup of its sewer system regardless of whether the liability for the event was waived under the tort claims act.

#### **HB 1635 “RCLA/Foreclosure”**

The Texas Residential Construction Commission has been recommended for sunset. This bill goes a step further and would affirmatively abolish the Commission. The bill would further exempt from liability any builder hired by a lender to complete the construction of a foreclosed home on that part of the structure which it did not construct. The builder would remain liable for the construction it completed.

#### **SB 992 “Courts bill”**

SB 992 is an effort to effectuate and harmonize SB 1204 (as it existed at the end of last session) and the recommendations made by the State Bar Task Force on Court Administration. The bill contains a number of provisions, however, the most prominent of these are: (1) the “Judge is a Judge” provision which would allow the parties and the courts to agree on the reassignment of a case to any judge within the County regardless of jurisdiction; (2) the conversion of district courts to courts of general jurisdiction. This would allow each county to determine how to best handle its docket without seeking approval from the legislature; (3) the conversion of certain county courts at law to district courts. This bill calls for a study on the costs of converting those county courts at law which do not “roll back” their civil jurisdiction to \$200,000 to district courts; (4) the court resources provision. This establishes a mechanism by which courts can request additional resources for cases with particularly complex needs. No request could be considered without the approval of the presiding trial judge. There are numerous other provisions as well, but these are the most significant to our membership.

#### **SB 394 “Worker’s Compensation Right to Counsel”**

Sen. Lucio proposes that the trial court judge be authorized to appoint an attorney at the request of the claimant to represent the claimant in a trial initiated by an insurance carrier. The insurance carrier would be liable for the claimant’s attorney’s reasonable and necessary fees in accordance with Texas Labor Code Section 408.221(c) on any issue on which the claimant prevails. Under SB 394 the claimant’s court appointed attorney cannot bill for more hours than the hours the carrier’s attorney bills. However, there is no limit as to the hourly rate the claimant’s attorney can charge. SB 394 would make the subsequent injury fund liable for the carrier’s attorney’s reasonable and necessary fees in accordance with Texas Labor Code Section 408.221(c-1) on any issue on which the insurance carrier prevails. SB 394 would also amend Texas Labor Code Section 408.221(b) & (l) and add a new Subsection (c-1). It appears new Subsection (c-1) would allow the court appointed claimant’s attorney to recover some of his attorney’s fees from the subsequent injury fund on any issue on which the insurance carrier prevails. The Bill would exempt an award of court appointed claimant’s attorney’s fees from the Workers’ Compensation Commissioner’s rules.

#### **SB 516 “Vexatious litigants”**

SB 516 changes existing law by requiring the plaintiff to file with the petition an affidavit essentially stating that the plaintiff is not a vexatious litigant. A plaintiff that cannot make the required affidavit can only file the lawsuit if a local administrative judge determines that the new lawsuit has merit and has not been filed for the purpose of harassment or delay. A defendant can still move the court to determine that the plaintiff is a vexatious litigant. There is no discussion regarding the impact of the statute of limitations on the process. The facts to which the Plaintiff must swear (that he/she/it has not filed five or more lawsuits in the prior seven years which have been finally determined adversely to the plaintiff; permitted to remain pending at least two years without having been brought to trial or hearing; or determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure.) This could disproportionately impact large national corporate defendants who may have a number of suits pending for more than two years.

#### **SB 1551 “OCIP bill”**

SB 1551 establishes a scheme to regulate the use of a “Consolidated Insurance Program” which is more often referred to as either an “Owner Controlled Insurance Program” or a “Contractor Controlled Insurance Program.” This bill sets out a number of requirements for a “principal” (which is broadly defined as the person who procures the insurance policy) in connection with their use of the insurance program with the contractors enrolled in the insurance program and who has entered into either a construction contract or a professional services contract. It appears directed to protect contractors and sub-contractors from being forced into prejudicial OCIP agreements.

#### **SB 392 “No Straight Ticket Voting for Judges”**

SB 392 seeks to remove judicial officers from “straight ticket” voting. Essentially, it would require that judicial races be treated differently from all other elected positions and would not allow the ballot cast for all candidates of a particular party to be counted as a vote in a judicial election. There have been efforts made to revise this bill to include a provision which would mandate that the judicial races be reviewed prior to any ballot being (even the straight ticket ballot) cast.

#### **SB 317 “No Straight Ticket Voting”**

Sen. Wentworth’s bill, SB 317, would eliminate the allowance of straight ticket voting for all offices, judicial and other wise.

## **UPCOMING EVENTS**

#### **SPECIAL REMINDER - 2009 TADC Trial Academy**

*This is an excellent opportunity for training 1-6 year lawyers in courtroom advocacy and an inexpensive alternative to many other programs.*

*A new 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*

For registration materials **CLICK HERE!**

**April 16, 2009**

**TADC Commercial Litigation Seminar**

Hilton Americas – Houston

Mitchell Smith, Chair

[CLICK HERE](#) for Registration

**April 24-25, 2009**

**TADC Trial Academy**

Omni Hotel (IH 10/410) – San Antonio

John Weber, Chair

[CLICK HERE](#) for Registration

**July 8-12, 2009**

**TADC Summer Seminar**

Coeur d'Alene Resort – Coeur d'Alene, Idaho

Doug Rees, Chair

**Sept. 30-October 4, 2009**

**TADC Annual Meeting**

Hotel Intercontinental – Montreal, Quebec

Max E. Wright, Chair

**\*\*\*DUES REMINDER\*\*\***

**2009 Dues Statements were mailed in early November 2008 and due January 1, 2009. If you have not already done so, be sure to pay your 2009 Dues**

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