



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

***IN THIS ISSUE: Meetings, Legislative & Election Update, Amicus Curiae Update***

## **FROM THE PRESIDENT**

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



*The TADC is now half-way through its 50th year. Now is a great time to attend a meeting. Cost of flights are very low. All of our hotels are top notch. Recruit a new member and lower your cost of attending a meeting \$50. **CLICK HERE** for a membership application. There are a number of other benefits to your membership. Feel free to forward this e-mail to a potential new members. Sign the member up today and have them attend one of the following great programs with you.*

## **CALENDAR OF EVENTS**

*April 23-24, 2010*

*TADC Trial Academy  
Galveston Courthouse/San Luis Hotel  
Fred Raschke, Chair  
**Registration***

<i>April 28-May 2, 2010</i>	<b><i>TADC Spring Meeting</i></b> <i>Hotel Del Coronado – San Diego, California</i> <i>Carol Traylor &amp; Greg Blaies, Co-Chairs</i> <b><u><a href="#">Registration</a></u></b>
<i>July 14-18, 2010</i>	<b><i>TADC Summer Seminar</i></b> <i>Westin Los Cabos – Cabo San Lucas, Mexico</i> <i>Patricia Alvarez &amp; Ed Carlton, Co-Chairs</i> <b><u><a href="#">Registration</a></u></b>
<i>August 6-7, 2010</i>	<b><i>Budget/Nominating Committee</i></b> <i>Austin, Texas</i>
<i>September 22-26, 2010</i>	<b><i>TADC Annual Meeting (50<sup>th</sup> Anniversary of TADC)</i></b> <i>Hyatt Hill Country Resort – San Antonio, Texas</i> <i>Christy Amuny &amp; Jane Haas, Co-Chairs</i>
<i>November 12-13, 2010</i>	<b><i>TADC Board of Directors Meeting</i></b> <i>Horseshoe Bay, Texas</i>
<i>January 14-15, 2011</i>	<b><i>TADC Board of Directors Meeting</i></b> <i>Austin, Texas</i>
<i>February 2-5, 2011</i>	<b><i>TADC Winter Seminar</i></b> <i>Steamboat Sheraton – Steamboat Springs, CO</i> <i>Mitch Smith &amp; Slater Elza, Co-Chairs</i>

## **LEGISLATIVE/ELECTION** **UPDATE**

**The primary run-off election on April 13 produced a few surprises.**

**The biggest race was for Place 3 on the Texas Supreme Court, where Tarrant County District Judge Debra Lehrmann won a narrow victory over former State Rep. Rick Green in the GOP primary. Judge Lehrmann will face Houston Court of Appeals Justice Jim Sharp (D) for the Place 3 seat in November. In legislative races, longtime incumbent State Representative Delwin Jones (R-Lubbock), first elected to the legislature in 1964, lost his seat to fellow Republican Charles Perry, who ran a Tea Party campaign. Two other Tea Party-affiliated candidates likewise won run-offs for the House: Lubbock businessman John Frullo defeated truck-stop magnate Mark Griffin in the other Lubbock seat (currently held by Republican Rep. Carl Isett), and wealthy investor Van Taylor defeated former Plano city councilmember Mabrie**

**Jackson for the House seat vacated by Calendars Chair Brian McCall (R-Plano). On the Democratic side, incumbent State Rep. Norma Chavez (D-El Paso) lost her re-election bid to Naomi Gonzalez, a close political ally of the new state senator from El Paso, County Attorney Jose Rodriguez.**

**Legislative interim studies continue to heat up. The House Ways and Means Committee is conducting a series of hearings on state and local tax exemptions and exclusions, including the current law exclusion of professional services from the state sales and use tax. With an estimated \$12-15 billion budget shortfall facing the legislature when it comes to town next January, each exemption and exclusion will be closely scrutinized. At the same time, it is far too early to tell what the likelihood of a revenue or tax bill will be next year, or what components might be considered in such a bill. In the meantime, TADC will closely monitor the issue as it develops.**

**Last month the House Judiciary and Civil Practices Committee held a hearing on the paid or incurred issue. Dan Worthington testified on behalf of TADC that the current paid or incurred provision does not align with the affidavit requirement for a defendant's expert testimony regarding "reasonable and necessary" medical expenses and the law should be harmonized. Specifically, TADC took the position that (1) medical billing has become a fiction in Texas; (2) there is a need to address the fiction; (3) CPRC 41.0105 is a flawed response, but the flaws can be addressed; (4) it can be addressed in a manner consistent with Texas law; (5) it can be addressed in a manner which preserves the traditional province of the jury; (6) it cannot be addressed without a reform to 18.001, which is designed with a bias toward plaintiffs; and (7) in the limited context of healthcare liability claims it can remain as is. TADC's testimony was positively received by several committee members. The next hearing of the committee will take place on May 26. The committee will take invited and public testimony with respect to the standard of causation in asbestos-related mesothelioma claims and barratry.**

**Yesterday, at a hearing convened by the Texas Judicial Compensation Commission, TADC Membership Vice President Pamela Madere, with Clark, Thomas & Winters, P.C. in Austin, testified on behalf of the Association. She advised the Commission that since its inception, the TADC has been a staunch supporter of adequate compensation for the judiciary and has supported appropriate funding for the judiciary as an independent, co-equal branch of state government. TADC testimony also pointed out that adequate funding and compensation of the judicial branch of government was paramount to the administration of justice in Texas. The TADC has offered to assist the Commission in the further study and ultimate resolution of this issue.**

The legislative process is dynamic. As always, your TADC leadership values your views and thoughts on these important legislative issues as we move forward

*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](http://www.tadc.org))*

## **AMICUS COMMITTEE UPDATE**

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

J. Mitchell Smith (Germer Gertz) filed an amicus brief in *Escabedo v. Haygood*, 283 S.W.3d 3 (Tex. App.---Tyler 2009, pet. granted) on the “paid or incurred” issue. The hospital billed Plaintiff about \$110,000.00, but after Medicare paid \$13,000.00 the hospital reduced the balance to \$14,000.00. The trial court excluded evidence of the write-offs and the jury awarded \$110,000.00 in medical bills. The Tyler Court of Appeals held that the statute made only amounts “actually paid or incurred” admissible evidence. Once it was clear that there have been write-offs, the original bill is not admissible. Both sides are asking the Supreme Court to take review and clarify the statute. The Supreme Court granted review on April 9, 2010; no date for argument has been set. **FOR A COPY OF THE BRIEF, [CLICK HERE](#)**

Brent Cooper (Cooper & Scully) was 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 argument was on October 8, 2009.

Roger Hughes (Adams & Graham) filed an amicus letter brief in support of a petition for review on *Simmons v. Bisland*, 2009 WL 961622 (Tex. App.—Austin Apr. 9, 2009, pet. denied)(memo. op.). The issue was reversible error in admitting improper evidence that arguably increased actual damages; the issue was whether the test for harmful error in admitting evidence announced in *Reliance Steel v. Sevcik* 267 S.W.3d 867 (Tex. 2008) applies across the board or only the evidence of corporate

wealth. Over objection, the trial court admitted evidence in a truck accident that the company did not test its drivers for drugs, which erroneously allowed the plaintiff to argue without basis that the company had “covered up” the driver’s intoxication; there was no evidence the driver was drunk or impaired. The court of appeal concluded this was error, but harmless. The Supreme Court denied review.

TADC also authorized amicus support for *In re State Farm Mut. Auto Ins. Co.*, Case No. 09-0956, a mandamus petition in the Supreme Court. It involved the issue of discovery into the number of times defendant’s insurer had retained two medical experts as testifying experts in other cases and how much the insurer had paid them to give expert opinions in the prior 5-10 years. The trial court granted the discovery. However, once the Supreme Court asked for merits briefing, the discovery request was withdrawn.

---

*Texas Association of Defense Counsel, Inc.*  
400 W. 15th Street, Suite 420, Austin, Texas 78701 512.476.5225 - 512.476.5384 FAX - [tadc@tadc.org](mailto:tadc@tadc.org)