



LEGISLATIVE UPDATE

June 2, 2009

The 81st Legislative Session adjourned yesterday (June 1) with several major issues unresolved. Chief among these are the sunset legislation for the Texas Department of Insurance and Texas Department of Transportation, though a deal was struck on financing for the Texas Windstorm Insurance Association. The Texas Residential Construction Commission, however, failed to win reauthorization and, unless something happens in a special session, will disband next year.

Remarkably few changes were made in the judicial system this session. Heated battles between the plaintiff's bar and business interests over the *Entergy v. Summers* decision, the so-called "paid or incurred" issue, and causation standards for asbestos-related mesothelioma cases produced a lot of smoke but no legislation. Court reorganization failed once more, as did bills allowing jurors to ask questions during trial and restricting arbitration provisions. Efforts to change the way judges are selected went nowhere. Legislation invalidating most broad-form indemnity provisions in construction contracts reached the House Calendar at session's end, only to die in the partisan dispute over voter identification.

In short, this session produced a stalemate on most civil justice issues. The change in House leadership, almost equal partisan balance (especially in the House), and major late session slow-down all combined to deal death to make it more difficult than ever to pass controversial legislation. We can expect interim studies on paid or incurred and asbestos-mesothelioma, however. Moreover, the Texas workers' compensation statutes are up for sunset review next session (unless extended), which will once again put the *Entergy* decision front and center.

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***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***