



# TADC

*e-Update*

The Texas Association of Defense Counsel, Inc.

***IN THIS ISSUE:*** [Message from the President](#), [Legislative News](#), [Up-Coming Events](#), [Legal News & Recent Opinions](#)

## **FROM THE PRESIDENT**

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



The 81<sup>st</sup> Legislature has gaveled in and is ready to do business. TADC is actively monitoring all filed legislation and is prepared to act on any measure that threatens the civil justice system. As the session progresses, we will keep the membership advised of any legislation that may affect your practice. A series of very successful TADC Legislative Luncheons have been held around the state beginning in late fall 2008. The Association and local members in Amarillo, El Paso, San Antonio, Austin, and Fort Worth were able to meet with legislators and share concerns about the upcoming session. Luncheons are being planned for Beaumont, East Texas, Lubbock, Dallas, and Houston in the coming month.

The 2009 Winter Seminar will be held next week in Steamboat Springs, Colorado. The snow is reportedly great and there is still room for late registrations. TADC's Spring Meeting will be held in Austin on March 4-8, 2009. Program Chair Kurt Kuhn has assembled an outstanding array of speakers including members of the judiciary, legislature, corporate counsel, and top litigators throughout the state. TADC will hold its legislative day on Wednesday, March 4 and I would encourage all members to come to Austin and participate in this important function. Association members will have the day to walk the capitol and educate legislators and staff on issues of importance. Wednesday's Spring Meeting opening reception will honor the

legislature and guests will be entertained by Austin's own Jazz Pharaohs. Thursday morning's CLE will begin with a breakfast honoring all current and former members of the Texas Supreme Court. [CLICK HERE](#) for registration materials to the 2009 Spring Meeting.

**Please be aware that you should secure your hotel reservations before February 9; the hotel will sell out due to other events in Austin.**

TADC's Commercial Litigation Seminar, which was rescheduled due to Hurricane Ike, will be held in Houston on April 16, followed by the 27<sup>th</sup> Annual Trial Academy in San Antonio on April 24-25. The TADC Summer Seminar will be held in Coeur d'Alene, Idaho July 8-12 and TADC's Annual Meeting will be in Montreal, Quebec September 30-October 4. The Program Chairs for each of these meetings promise outstanding CLE. I would encourage everyone to attend.

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

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### ***The TADC Offices Have Moved!***

*In order to better serve the membership, the TADC Offices have moved into a new office suite. All contact information will remain the same (phone, fax, email). The only information that changed is the suite number.*

*The new address information is:*

**TADC  
400 West 15<sup>th</sup> Street, Suite 420  
Austin, Texas 78701**

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### **\*\*\*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**

## **LEGISLATIVE NEWS**

As everyone is most likely aware, the Legislature convened this past Tuesday and the first order of business in the Texas House was the election of a speaker. Under ordinary circumstances, this process is a mere formality. But as everyone knows, since opening day of 2007 this House has been anything but ordinary.

Representative Joe Straus (R-San Antonio) emerged the victor, unseating incumbent Tom Craddick (R-Midland) who, faced with dwindling support withdrew from the race. The end of Speaker Craddick's tenure as speaker will have a very significant impact on both the House's legislative agenda this session and the makeup of the leadership team.

The drama in the Speaker's race has overshadowed significant developments in the Senate. The election of Democrat Wendy Davis of Fort Worth has shifted the balance of power in the Senate back toward the Democratic camp. Given the Senate's 21-vote requirement for bringing up bills for debate, Democrats now have a solid and probably unbreakable blocking minority on any bill Lieutenant Governor Dewhurst wants. This gives the Democrats substantial leverage to forward their agenda, particularly on budgetary, health care, and education issues. It also puts key planks of the GOP program, such as voter identification, in grave danger this session. Going into a statewide election in 2010, the Republicans will find it difficult to achieve anything attractive to the social conservative wing of the party this session.

Beyond the Speaker's race, the most significant first week event was the release of Comptroller Susan Combs' state revenue estimate for the next biennial budget period. This number determines the amount of money the Legislature has to work with when writing the 2010-2011 state budget. The Comptroller advised the Legislature that it can expect no budget "surplus" in the next two years, a vast change from prior forecasts of a several billion dollar cushion. It is important to remember, however, that the enormous run-up in oil and gas prices last year helped build a massive \$7 billion pot of money in the state's rainy day fund. The Legislature will have to decide whether to access some or all of the rainy day fund to make up budget shortfalls in areas such as public education, property tax relief, and health and human services.

Not to be outdone, Governor Rick Perry has instructed state agencies to cut another five percent or so out of their budgets, and chances are that he will oppose any spending out of the rainy day fund that does not go to direct tax relief. The Governor has publicly stated that he will veto anything he perceives as a job-killer and plans to run for re-election on his record as a job-creator. Whether he in fact will take on U.S. Senator Kay Bailey Hutchison for Governor remains to be seen, but for the time being he has indicated every intention of doing so.

Budget issues will thus dominate this session. Additionally, sunset review of TXDOT and the Texas Department of Insurance will provide plenty of political controversy. Expanded gaming will also likely come to the top of the agenda, both as a revenue and economic development issue, pitting the conservatives against the more moderate Republicans and their Democratic allies.

Sit back and enjoy the ride!

*For copies of any testimony presented by TADC during the legislative session and other up-to-date legislative news, visit the members' side of the TADC website ([www.tadc.org](http://www.tadc.org))*

## **MEMBER SERVICES COMMITTEE**

Life in today's world is filled with extraordinary stress. The day-to-day practice of law adds another layer of stress, and the tremendous changes we have seen in the profession in the past decade add to the uncertainty of the future. For many of us, these may be desperate times or at least times that appear to be headed for a desperate period. Do desperate times call for desperate measures?

When life is filled with a sense of desperation, we know that a certain number of our professional friends and colleagues will see alcohol and drugs as the solution to the problem and others may experience deep depression. We have seen the effects of alcoholism, drug addiction and depression in our membership: suicide and death from medical conditions attributable to alcohol and drugs. No one ever wants to come to the realization that he or she, a family member, or a professional colleague may have a problem with alcohol, drugs or depression, but those problems exist and people die from them. Trial lawyers are among those most at risk.

In the fall of 2006, the TADC Member Services Committee was created for the specific purpose of offering assistance to TADC members and their colleagues, family members, and friends who may be battling depression or substance abuse. If you or someone you know may need help, or if you are wondering how to deal with a colleague, family member or friend who needs help, please contact any of the three co-chairmen of the committee: Jo Ben Whittenburg ([jbw@obt.com](mailto:jbw@obt.com)), Max Wright ([mwright@hinklelawfirm.com](mailto:mwright@hinklelawfirm.com)) or Stan Perry ([stan.perry@haynesboone.com](mailto:stan.perry@haynesboone.com)) or the TADC office. All inquiries are kept strictly confidential. The TADC Member Services Committee works through the Texas Lawyers Assistance Program to insure the statutory confidentiality and privilege that TLAP offers.

No one has to fight this battle alone; help is always available.

## UPCOMING EVENTS

### **SPECIAL REMINDER - TADC 2009 SPRING MEETING/LEGISLATIVE DAY**

Join the TADC in Austin March 4-8, 2009 at the Hyatt on Lady Bird Lake  
Don't miss this GREAT meeting!

For registration materials [CLICK HERE!](#)

*be advised rooms will sell out, make your hotel accommodations before  
February 6, 2009*

**January 28-February 1, 2009**

**2009 Winter Seminar**

Robert Sonnier, Program Chair  
Sheraton Steamboat Springs – Steamboat Springs, CO

**March 4-8, 2009**

**TADC Spring Meeting/Legislative Day**

Hyatt on Lady Bird Lake – Austin

Kurt Kuhn, Chair

[CLICK HERE](#) for Registration

**Legislative Day 03/04 in the afternoon**

Brad Douglas, Chair

**April 16, 2009**

**TADC Commercial Litigation Seminar**  
Hilton Americas – Houston  
Mitchell Smith, Chair

**April 23-24, 2009**

**TADC Trial Academy**  
Omni Hotel (IH 10/410) – San Antonio  
John Weber, Chair

**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

## **LEGAL NEWS**

### **DAMAGES**

#### **Gardner v. U.S. Imaging, Inc.**

(Tex. 12/19/2008)

The court rejected the defendants' contention that the expert report was so deficient as to constitute no report at all and concluded that the court of appeals should have remanded the suit to the trial court to consider granting a 30-day extension to cure the expert report. Texas Supreme Court, No. 08-0268. **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**

#### **B.Z.B., Inc. v. Clark**

(Tex.App. Dist.14 12/30/2008)

Because the trial court's plenary jurisdiction had expired by the time the dispute over the terms of the settlement agreement arose, it did not have jurisdiction to address the parties' dispute. Houston's 14th Court of Appeals, No. 14-07-00423-CV. **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**

#### **Poland v. Ott**

(Tex.App. Dist.1 12/19/2008)

The trial court did not err in granting Dr. Ott's motion to dismiss the claims against him for the Poland parties' failure timely to serve an expert report on Dr. Ott. Houston's 1st Court of Appeals, No. 01-07-00199-CV. **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**

#### **Brookshire Brothers Holding, Inc. v. Dayco Products, Inc.**

(5th Cir. 01/06/2009)

When a district court declines to exercise jurisdiction over remaining state law claims following the dismissal of all federal-law claims and remands a suit after investing a significant amount of judicial resources in the litigation analogous to that invested by the district court in this case, that court has abused its discretion under 28 U.S.C. § 1367. 5th U.S. Circuit Court of Appeals, No. 07-31154. **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**

## [INSURANCE LAW/WORKERS' COMPENSATION](#)

### **Southwestern Bell Telephone Company, L.P. v. Mitchell**

(Tex. 12/19/2008)

An insurance carrier that fails to comply with 409.021(a) of the Workers' Compensation Act (a) does not waive the carrier's right to contest the compensability of the injury as provided by Subsection (c) but commits an administrative violation subject to Subsection (e). Texas Supreme Court, No. 05-0171. **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**

### **United States Fidelity and Guaranty Co. v. Goudeau**

(Tex. 12/19/2008)

Under the insurance policy here, Goudeau was not "occupying" his car at the time of the accident, so he cannot recover under this policy. Texas Supreme Court, No. 06-0987. **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**

## [DAMAGES](#)

### **Bechtel Corp. v. CITGO Products Pipeline Co.**

(Tex.App. Dist.3 12/19/2008)

CITGO's damages are not reimbursement for any amounts it expended in reliance on the promises, but compensation for consequential losses CITGO claimed it incurred when appellants failed to perform their promises. Such damages are in the nature of expectancy damages: they place CITGO in the position it claims it would have been had the promises been kept. Such damages are not recoverable through promissory estoppel. Austin Court of Appeals, No. 03-05-00430-CV **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**

### **Irving Holdings, Inc. v. Brown**

(Tex.App. Dist.5 01/05/2009)

The trial court correctly applied § 33.012(a) of the Texas Civil Practice and Remedies Code to reduce the claimant's damages — including his reasonable and necessary medical or health care expenses — by his percentage of responsibility, before applying § 41.0105 of the same code to ensure the claimant's recovery of medical or health care expenses did not exceed the amount of such expenses actually paid or incurred. Dallas Court of Appeals, No. 05-06-01654-CV. **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**