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FROM THE PRESIDENT...

Fred D. Raschke, Mills Shirley, LLP; Galveston

Spring is in the air and the TADC is preparing for a busy season. Legislative Interim Study Committees will begin meeting in earnest starting in April and your TADC Legislative Vice Presidents and the Committee are busy reviewing interim charges and preparing testimony and white papers on issues of importance to the Civil Justice System. In our last E-Update, we provided links to these studies for your information. I would encourage any member who has a concern or wishes the Association to study a particular charge, to contact me or the TADC office so that we can transmit this information to the Legislative Committee.

With the March 4 primary elections finally over, the dust is settling and everyone has a much clearer picture of what the general election will hold this November. A comprehensive report on election results follows this message.

TADC's 26th Annual Trial Academy is coming up April 4-5, 2008, in Dallas at the Omni Hotel at Park West. This is one of TADC's premier programs. If you have a new attorney in your firm with little or no courtroom experience, I would strongly urge you to send them to the Trial Academy. 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. For registration material for this program, [CLICK HERE](#).

The 2008 Spring Meeting will be held in Chicago this year and Program Chair Dan Worthington has assembled a fantastic lineup of speakers ranging from top-notch trial attorneys from all over Texas, to district judges, Supreme Court Justices, and Federal Judges. After Thursday's CLE sessions, attendees will have the opportunity to watch the Cubs and Brewers square off, from a rooftop adjacent to Wrigley Field. Registration materials have been mailed to the membership. For Spring Meeting registration material, [CLICK HERE](#).

The TADC is breaking ground with a brand new seminar this year, specifically designed for the Intellectual Property lawyer. Our first IP Seminar is in the planning stages and is scheduled for May 15, 2008, at the Belo Mansion in Dallas. We truly believe this seminar will benefit that segment of the TADC membership practicing in this area. The program will be filled with distinguished members who practice exclusively in IP

Litigation, as well as many Federal Judges who handle these types of cases. Mark your calendar and look for registration material in the next few weeks.

Lastly, I want to alert you all to the launch of TADC's Membership Recruitment Program. In mid-March we will kick-off this initiative, designed to spread the word to would-be members as to the workings and programs of the TADC. There will be incentives for current members to recruit new members. This organization has a vast amount of programs and resources to offer practicing litigators, ranging from business and personal development, to amazing CLE opportunities, to legislative involvement, and much more. There is strength in numbers and if each TADC member recruits just one new person, the TADC will have even more ability to affect public policy and preserve and protect the civil justice system in Texas. The TADC is the voice of the defense and commercial bar in Texas. If you are not a member of the TADC, your voice is not being heard. Look for a full explanation and layout of this program in the coming few days.

As I said at the beginning of this message, we are going to be busy this Spring and I hope that you get involved in these important legislative activities and programs. Please do not hesitate to contact me or the TADC office if we may be of assistance to you on any matter.

LEGISLATIVE NEWS

TADC Election Update

With national attention focused on the March 4 Texas primary, record numbers of voters flocked to the Democratic primary to cast their vote for president. An astounding 2,868,454 Texans voted in the Democratic primary this week. To put that number in perspective, about 840,000 people voted for president in the 2004 Democratic primary, up from the 726,000 or so who voted in the 2000 race.

By contrast, 1,384,662 voters turned out to cast ballots in an essentially uncontested Republican presidential primary. Still, it bears noting that Hillary Clinton received more votes than the entire Republican turnout, and Barack Obama nearly did the same. If nothing else, Democrats have captured an enormous voter list for the fall campaign and future years.

The impact of the presidential vote can be seen down the ballot. A little more than 2.17 million of those who voted in the Democratic presidential race stuck around to vote for a U.S. Senate candidate (State Rep. Rick Noriega edged Gene Kelly for the Democratic nomination and the right to challenge incumbent U.S. Senator John Cornyn). Only about 1.7 million then went further down the ballot to vote for the Texas Supreme Court candidates. They chose Sam Houston and Linda Yanez to challenge incumbent Justices Dale Wainwright and Phil Johnson, respectively (Dallas district judge Jim Jordan was unopposed for the Democratic nomination for Chief Justice and will challenge incumbent Chief Justice Wallace Jefferson in the fall).

With respect to legislative races, the enhanced voter turnout does not appear to have significantly affected the outcome of most races. The cardinal rule of elections is that incumbents almost always win, and that maxim held true for the most part. Still, eight incumbent members of the Texas House were defeated in their party primaries: Rep. Corbin Van Arsdale (R-Houston); Rep. Thomas Latham (R-Mesquite); Rep. Pat Haggerty (R-El Paso); Rep. Kevin Bailey (D-Houston); Rep. Juan Escobar (D-Kingsville); Rep. Borris Miles (D-Houston); Rep. Nathan Macias (R-New Braunfels); and Rep. Paul Moreno (D-Houston).

A number of other House incumbents survived serious challenges (some by greater margins than others). These include: Rep. Phil King (R-Weatherford); Rep. Charlie Geren (R-Fort Worth); Rep. Byron Cook (R-Corsicana); Rep. Delwin Jones (R-Lubbock); Rep. Joe Crabb (R-Humble); Rep. Dora Olivo (D-Missouri City); Rep. Aaron Pena (D-Edinburgh); Rep. Kino Flores (D-Mission); Rep. Jerry Madden (R-Plano); and Rep. John Davis (R-Pasadena). Additionally, incumbent Rep. Buddy West (R-Odessa) was forced into a runoff.

On the Senate side, only three incumbents faced primary challenges of any significance, and they all won by large margins. These include Senator Tommy Williams (R-The Woodlands), Senator Craig Estes (R-Wichita Falls), and Senator Judith Zaffirini (D-Laredo).

Most court of appeals incumbents who were challenged in primary elections prevailed. The exception was Justice Sam Nuchia of the First Court of Appeals in Houston, who lost to challenger Ed Hubbard. Justice Steve McKeithen won a close race for the Ninth Court in Beaumont. Former State Senator Bill Meier won the Republican nomination for an open seat on the Second Court of Appeals in Fort Worth. Former TADC President Pat Kerrigan won a landslide victory in the Harris County Republican primary for the district court bench to which she was recently appointed.

The scene will now shift to the general election in November. If the primary is any indication, we can once again expect a much larger than normal voter turnout. How this will affect down-ballot races, such as those for the Texas Supreme Court and legislative offices, remains to be seen. Democrats have succeeded in fielding three legitimate candidates for the Texas Supreme Court for the first time in many years. One or more of these could benefit from a big Democratic turnout in the fall. In the Third Court of Appeals in Austin, challenger and former Justice Woodie Jones (D) will mount a strong challenge to incumbent Chief Justice Ken Law (R).

Additionally, a number of legislative races could be closely contested. The El Paso district held by Rep. Pat Haggerty, who lost the primary to El Paso businessman Dee Margot in a race in which both Governor Rick Perry and House Speaker Tom Craddick gave significant contributions to Margot, is thought to be at risk of going Democratic in the fall. Another district potentially in play is the Fort Worth seat currently held by Republican Rep. Bill Zedler. Republicans are aiming to take seats away from Democrats as well, including the seat currently held by retiring Rep. Robbie Cook (D-Eagle Lake), and those narrowly captured by Democrats two years ago, including Reps. Allen Vaught (D-Dallas) and Juan Garcia (D-Corpus Christi). In the Senate, incumbent Senator Kim Brimer (R-Fort Worth) may have a serious challenger in former Fort Worth City Council member Wendy Davis (if Davis is not declared ineligible).

All in all, little overall change in the balance of the legislature resulted from Tuesday's election. Despite the hype, legislative turnover may not be unusually high after all. On the other hand, even a few seats changing hands could have far-ranging impact on the Speaker's race in the House. We'll have to wait until November--and possibly beyond--to resolve that.

UPCOMING EVENTS

SPECIAL REMINDER - TADC 2008 TRIAL ACADEMY

This seminar will be held in Dallas on April 3-5, 2008 at the Dallas Omni Hotel at Park West. The Trial Academy has only a limited amount of space remaining. **DON'T MISS** this outstanding Trial Advocacy Seminar designed specifically for new attorneys licensed 1-5 years.

For registration materials [CLICK HERE!](#)

April 3-5, 2008

26TH TADC Trial Academy

Paige Pace & Jeff Kinsel, Program Chairs
Omni Hotel at Park West B Dallas
[CLICK HERE](#) for registration material

April 30-May 4, 2008

TADC Spring Meeting ****REGISTER NOW****

Dan Worthington, Program Chair
Keith & KaRynn O=Connell, Meeting Chairs
Hotel Intercontinental Chicago B Chicago, IL

[CLICK HERE](#) for registration material

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|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| May 15, 2008 | TADC Intellectual Property Seminar
Belo Mansion/Annex – Dallas, Texas
<i>Registration to be mailed in late March</i> |
| July 16-20, 2008 | TADC Summer Seminar
Ken Tekell, Jr. & Neal Pirkle, Program Chairs
Debbie Bullion & Jim Gascoyne, Meeting Chairs
Ritz-Carlton Resort Grand Lakes B Orlando, FL |
| August 8-9, 2008 | Budget/Nominating Committee
Hyatt Regency Hotel - Austin |
| September 24-28, 2008 | TADC Annual (Fall) Meeting
Otway Denny, Jr., Program Chair
Vicki Lewis & Kim Raschke, Meeting Chairs
San Luis Hotel B Galveston |
| November 14, 2008 | TADC Civil Justice Forum
Pat Weaver, Chair
Westin City Center – Dallas |

LEGAL NEWS

CIVIL PRACTICE

Gomez v. Pasadena Health Care Management, Inc.

(Tex.App. Dist.14 01/17/2008)

Texas Business Corporation Act Art. 7.12 prevails over the statute of limitations contained in the Medical Liability and Insurance Improvement Act. Because Juan Gomez failed to file his son Michael's claims against Pasadena Health Care Management Inc. within three years of Pasadena's dissolution, those claims are extinguished. Houston's 14th Court of Appeals, Nos. 14-06-00605-CV and 14-06-00957-CV **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**

Living Centers of Texas, Inc. v. Pealver

(Tex. 01/25/2008)

The improper jury argument, by comparing the nursing home's trial counsel to perpetrators of Nazi atrocities, sought to incite passions of the jury and turn the jurors against defense counsel for doing what lawyers are ethically bound to do: advocate clients' interests within the bounds of law. Texas Supreme Court, No. 06-0929 **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**

Ji-Haw Industrial Co., Ltd. v. Broquet

(Tex.App. Dist.4 02/20/2008)

Bonnie Broquet alleged sufficient jurisdictional facts to bring Ji-Haw Industrial Co. Ltd. within the Texas long-arm statute. Accordingly, the burden shifted to Ji-Haw to negate all bases of personal jurisdiction. Because Ji-Haw only alleged and proved nonresidency in its special appearance, it did not negate all bases of personal jurisdiction. San Antonio Court of Appeals, No. 04-07-00622-CV **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**

Roehrs v. FSI Holdings, Inc.

(Tex.App. Dist.5 02/26/2008)

The trial court erred by granting summary judgment on Daniel Roehrs and Kieran McGrath's counterclaim based on alleged misconduct or misbehavior by arbitrator Richard Faulkner. Dallas Court of Appeals, No. 05-06-01432-CV **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**

TORTS

Vanderbeek v. San Jacinto Methodist Hospital

(Tex.App. Dist.14 01/31/2008)

The trial court did not err by granting summary judgment in favor of San Jacinto Methodist Hospital on the ground that Chapter 95 of the Texas Civil Practices & Remedies Code barred Gary Vanderbeek's claim. Houston's 14th Court of Appeals, No. 14-06-00783-CV **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**

Chau v. Riddle

(Tex. 02/15/2008)

The court found evidence that intubating newborns in this situation is part of Dr. Jefferson Riddle's job as the on-call anesthesiologist in the labor and delivery suites. Thus, the 1st Court of Appeals erred in affirming summary judgment for Riddle on Good Samaritan defense. Texas Supreme Court, No. 07-0035 **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**

INSURANCE LAW

Excess Underwriters at Lloyd's v. Frank's Casing Crew Rental Tool, Inc.

(Tex. 02/01/2008)

Frank's Casing did not impliedly agree to reimbursement by taking an active role in procuring the settlement offer and in demanding that the excess underwriters settle the claim. Texas Supreme Court, No. 02-0730 **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**

Evanston Insurance Co. v. Atofina Petrochemicals, Inc.

(Tex. 02/15/2008)

ATOFINA Petrochemicals Inc. was entitled to indemnification from Evanston Insurance co. by virtue of its status as an additional insured on the umbrella policy Evanston issued to Triple S Industrial Corp. Texas Supreme Court, No. 03-0647 **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**

National Union Fire Insurance Company of Pittsburgh, PA v. Crocker

(Tex. 02/15/2008)

Insurers need not provide coverage to additional insureds who never seek it. Thus, National Union Fire Insurance Co. had no duty either to inform Richard Morris of available coverage or to voluntarily undertake a defense for him. Texas Supreme Court, No. 06-0868 **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**

WORKERS COMPENSATION

Fairfield Insurance Co. v. Stephens Martin Paving, LP

(Tex. 02/15/2008)

The public policy of Texas does not prohibit insurance coverage of exemplary damages for gross negligence in the workers' compensation context. Texas Supreme Court, No. 04-0728 **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**