



TADC

e-Update

The Texas Association of Defense Counsel, Inc.

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FROM THE PRESIDENT...

Fred D. Raschke, Mills Shirley, LLP; Galveston

Spring has proven to be a busy time for the TADC. The 26th Annual Trial Academy was held with great success in Dallas, in early April. Evaluations from both faculty and attendees were extremely positive, proving that the TADC Trial Academy remains the flagship trial advocacy training program of its kind in the country. Most recently, the TADC held the 2008 Spring Meeting in Chicago. Attendees were treated to outstanding CLE presentations from such notable lawyers as Representatives Veronica Gonzales and Dan Gattis, discussing the Texas Legislature and what to expect in 2009 and Justice Paul Green discussing recent Supreme Court Opinions, including UPLC. Members and their guests were also treated to a special guest luncheon speaker, Ms. Anne Eleanor Roosevelt, granddaughter of the late President Franklin Roosevelt. Thursdays activities included an afternoon at the ballpark on a rooftop across from Wrigley Field to watch the Cubs and the Brewers play.

Next on the hit parade is the **2008 TADC IP Seminar** to be held in Dallas next Thursday, May 15. [CLICK HERE](#) for registration materials. By now you will have received registration materials for the **Summer Seminar** to be held in Orlando on July 16-20, 2008. I encourage you to register for this seminar quickly as space is limited and will fill in a hurry. Ken Tekell, Jr. of Houston and Neal Pirkle of Waco have assembled a first rate program of top notch trial attorneys, including notable attorney Barry Richard of Florida (President Bush's lawyer during the Florida voter scandal in 2000) to speak on security and the erosion of civil liberties in the U.S. [CLICK HERE](#) for registration.

As you are all no doubt aware, there has been a substantial amount of activity in both the Texas Legislature, with interim study committees, and the Texas Supreme Court with a flood of opinions recently. The TADC has been active in the legislature, having testified before both the Senate State Affairs

Committee and the House Business and Industry Committee with regard to their interim charges. A more complete description of the hearings and TADC's involvement is provided in the legislative update following this message. Be advised that the written testimony provided by the TADC to the Committees is posted on the members' side of the TADC website at www.tadc.org and you may view the video of the Senate hearing by [CLICKING HERE](#) And view the house hearing by [CLICKING HERE](#)

Among the numerous opinions released by the Texas Supreme Court in recent weeks, the UPLC v. American Home Assurance case is one of the most notable. The TADC has issued a press release regarding the case and has talking points and an Op/ed piece which has been circulated to the major print media outlets in the State. You may view all of this material which is posted on the members' side of the TADC website.

And on a final note, the TADC has kicked off its Spring Membership Drive! The best way to recruit new members is to have you, a current member, bring a colleague on board! For every new member you recruit between now and **July 31, 2008**, you will receive a **\$50.00 credit towards ANY TADC** service, including Expert Witness and Deposition Services, CLE Seminars and Publications!

As a member, you already know the benefits of being part of the TADC:

- **Business** and **Professional Development** opportunities
- **THE ONLY** voice united and working on behalf of the defense bar in the legislature
- Outstanding CLE programming to benefit your practice, including **ONLINE** webcasts and podcasts
- Expert Witness and Deposition services with information on over **35,000 Experts** and over **60,000 Depositions** on file
- Specialized **E-UPDATES**, alerting you to the latest in changing case law, legislative happenings and Association news
- Professional newsletters written expressly for the defense practitioner in over **15 specific areas of the law**
- Amicus Curiae support
- An organization to which **ONLY** an attorney in private practice can belong, meaning **ONLY** the interests of private practice attorneys are represented

The list of benefits goes on and on! The TADC is nationally recognized as a leader among bar groups across the country. *Spread the word to just 1 colleague* and help the TADC continue to grow in order to represent your interests.

HOW? Simply [CLICK HERE](#) for a TADC membership application and sign up a friend or colleague today! Sign the application as the primary sponsor (please print your name underneath your signature) and once the application is received and processed by the TADC, you will receive a \$50.00 credit good towards any good or service offered by the TADC. The more members you sign up, the more credit you receive! Your credits are good for use through October 31, 2008!

Don't hesitate to contact Rachel Fischer, TADC Membership Coordinator, rfischer@tadc.org or any member of the TADC staff if we may be of assistance.

With your support, TADC will continue to be the flagship organization it is today!

LEGISLATIVE NEWS

Legislative interim committee hearings held last week identified several areas of concern for policymakers in the civil justice arena. While the Senate State Affairs Committee, House Business and Industry, and House Insurance focused most of their attention on the SCOT's *Entergy v. Summers* decision (now on rehearing), much of the discussion revolved around the appropriate balance of power between the Legislature and the Supreme Court. There appears to be broad bipartisan agreement, at least in these three committees, that some recent decisions of the court have either misconstrued or ignored the Legislature's intentions. Whether or not one concurs with this interpretation of the court's actions, the fact remains that the Legislature believes that the court has "gone too far" and that a legislative correction may be necessary.

Another theme that emerged from the hearings is a growing unease about the implications of some of the reforms enacted in 2003, particularly with respect to medical liability. While there appears to be little interest in wholesale changes to H.B. 4 (e.g., the cap on non-economic damages), consensus seems to be building among legislators that some changes need to be made, specifically in the emergency room standard of care, the "paid or incurred" provision, and expert report requirements. TADC has been deeply involved in these issues and will play a crucial role in whatever changes may be proposed during the next legislative session, and there is little doubt that these issues will be addressed in some fashion.

Insurance reform also appears to be moving up on the list of legislative priorities for 2009. The Texas Department of Insurance is currently undergoing sunset review, and this process may become a focus for legislative reform efforts. Recent comments by Governor Perry indicate that homeowner and automobile insurance rates continue to be a sore point for elected officials, and insurance underwriting and rating practices may come under close scrutiny once again.

Finally, there appears to be broad bipartisan support for the idea that the Legislature has finished "tort reform," at least as a major policy initiative. This is not to say that civil justice issues will not continue to be at or near the top of the legislative agenda; they clearly are and should be. But the focus has shifted away from fundamental shifts in the allocation of liability and toward a reassessment of the balance of social costs and economic benefits in the system as a whole. This balance has always been the specific policy objective of the TADC, and changing legislative attitudes toward the civil justice system are certainly positive in the long-term.

For copies of the TADC's testimony presented to the Legislature and press releases and related matter on the UPLC opinion, visit the member's side of the TADC website (www.tadc.org)

NEWS OF MEMBERS



Roland K. Johnson, managing shareholder with the Fort Worth law firm of



Harris, Finley & Bogle, P.C., has been elected President-Elect for the State Bar of Texas. Johnson is a longtime member of the TADC and has served in the past, as a District Director for the Fort Worth Area. Johnson will serve as President of the State Bar of Texas in the year 2009-2010. For a complete press release, [CLICK HERE](#)



TADC Past President **David E. Chamberlain** has been elected to serve on the Executive Committee of the Austin Bar Association as Treasurer for 2008-2009. Chamberlain has also been named outstanding Director for the Austin Bar Association for 2007-2008

UPCOMING EVENTS

SPECIAL REMINDER - TADC 2008 INTELLECTUAL PROPERTY SEMINAR

This seminar will be held in Dallas on May 15, 2008 at the Belo Mansion, 2200 Ross Avenue. Don't miss this GREAT Seminar

For registration materials [CLICK HERE!](#)

May 15, 2008

TADC Intellectual Property Seminar
Belo Mansion – Dallas
[CLICK HERE](#) For Registration Materials

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
[CLICK HERE](#) For Registration Materials

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](#)

Owens Minor, Inc. v. Ansell Healthcare Products, Inc. (Tex. 03/28/2008)

Texas Civil Practice and Remedies §82.002 does not require a manufacturer to indemnify a distributor against claims involving products other manufacturers released into the stream of commerce. Texas Supreme Court, No. 06-0322 TO READ THIS OPINION IN FULL, [CLICK HERE](#)

TORTS

Mission Consolidated Independent School District v. Garcia (Tex. 03/28/2008)

The Texas Tort Claims Act's election-of-remedies provision applied to bar Garcia's common-law claims against Mission Consolidated Independent School District, but did not bar her claims under the Texas Commission on Human Rights Act. Texas Supreme Court of Appeals, Nos. 05-0734 consolidated with 05-0762 and 05-0763 TO READ THIS OPINION IN FULL, [CLICK HERE](#)

In re Jordan (Tex. 03/28/2008)

Texas law prohibits pre-suit depositions in medical malpractice cases until after a plaintiff serves an expert report. Texas Supreme Court, No. 06-0369 TO READ THIS OPINION IN FULL, [CLICK HERE](#)

INSURANCE LAW

Nationwide Insurance Co. v. Elchehimi (Tex. 03/28/2008)

Mohamad Elchehimi's vehicle did not make actual physical contact with the unidentified vehicle. Rather, Elchehimi's vehicle hit an axle-wheel assembly separated from an unidentified semi-trailer truck. Thus, the uninsured motorist coverage was not triggered. Texas Supreme Court, No. 06-0106 TO READ THIS OPINION IN FULL, [CLICK HERE](#)

Unauthorized Practice of Law Committee v. American Home Assurance Company, Inc. (Tex. 03/28/2008)

An insurer may use staff attorneys to defend a claim against an insured if the insurer's interest and the insured's interest are congruent, but not otherwise. Texas Supreme Court, No. 04-0138 TO READ THIS OPINION IN FULL, [CLICK HERE](#) TO READ THE DISSENT IN FULL, [CLICK HERE](#)

ARBITRATION

Hall Street Associates, LLC v. Mattel, Inc., (128 S.Ct.1396, US March 25, 2008)

In this case, The United States Supreme Court holds that the scope of judicial review under the Federal Arbitration Act is exclusive, and the parties may not modify the specific scope of the Federal Arbitration Act judicial review provisions by contract TO READ THIS OPINION IN FULL, [CLICK HERE](#)

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