



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



FROM THE PRESIDENT...

Fred D. Raschke, Mills Shirley, LLP; Galveston

In the aftermath of Hurricane Ike, the TADC has taken the lead in coordinating offers of office space and other services for members in Galveston, Houston, Beaumont and the entire southeast Texas Gulf Coast, who have been affected by the storm. As one of those displaced lawyers, I want to take this opportunity to thank the TADC membership for their generous outpouring of support and offers of assistance to fellow members in the affected areas. This is but one of the things that makes the TADC an outstanding organization and a leader in the nation for associations of civil trial attorneys.

Thanks also to DRI and our sister organizations in other states who have made great offers of assistance.

If any member affected by Hurricane Ike is in need of assistance, office support, office space, etc., please contact the TADC office (tadc@tadc.org).

There are ways for members to offer assistance to the general public as well. The Supreme Court Task Force on Expanding Legal Services is seeking volunteers to help with service in any of the 28 Disaster Response Centers in the regions affected by Ike. Lawyers would be helping with temporary housing issues, Medicaid issues, FEMA service issues, temporary school enrollment, etc., for persons displaced by Ike. To volunteer your time, contact Karin Crump, Chair of the Task Force at Karin@lakesidemediation.com

The TADC is steaming ahead towards the fall and impending Legislative Session beginning in January 2009.

As you are aware, the TADC Annual Meeting was cancelled due to the hurricane but the Annual Business Meeting for the Association will take place at 1:30pm on Friday, October 3, 2008 in the third floor auditorium of the Wells Fargo Bank Building (400 W. 15th Street), Austin, Texas.

TADC's Commercial Law Seminar scheduled for Thursday, October 2 in Houston will be re-scheduled for early spring 2009, due to Houston's on-going cleanup efforts following Ike.

With the Texas Legislature preparing to meet in January, the TADC is scheduling legislative luncheons throughout the state to give members the opportunity to meet their local representatives and find out what likely issues will find their way on the legislature's agenda. Luncheons have been scheduled in San Antonio for October 30 and Amarillo for October 31. Luncheons are being planned

for Austin, Houston and Beaumont before year's end.

The 2008 TADC Civil Justice Forum is scheduled for November 14, 2008 in Dallas and registration materials have been mailed to the membership. This unique concept was initiated by the TADC in 2006, with the purpose of bringing together members of the bench, bar, legislature and business community to openly discuss the preservation of the Civil Justice System and its importance in the lives of all Texans. Speakers at this year's seminar include Judge Haynes with the United States Fifth Circuit, Senior Judge Royal Ferguson from the Western District of Texas, Texas Supreme Court Justice Paul Green, Representative Dan Branch and David Beck. I would encourage you to try and attend this important forum. [CLICK HERE](#) for registratin materials

The TADC Winter Seminar program is in its final planning stages and registration materials will be mailed in mid-October. Program Chair Robert Sonnier has assembled an outstanding group of speakers and the newly renovated Sheraton Steamboat Springs will provide the perfect venue for the Seminar. Make your reservations early as space is limited for the Winter Seminar.

And on a final note, now is the perfect time to recruit new TADC members. Dues are pro-rated for the year beginning August 1 and as of October 1, you can sign up a young lawyer for just \$25.00 for the remainder of 2008 and a 5 year or more lawyer for only \$35! The TADC has strength in numbers and is the only voice in Texas for the Defense Bar. Recruit as many colleagues as you can so that TADC will enter 2009 and the Legislative Session with the loudest voice possible! [CLICK HERE](#) for a membership application. 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.

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

As the 2008 election cycle enters its final phase, TADC is monitoring a number of issues. On September 17, Bill Wade & Bud Grossman testified on TADC's behalf before a Senate Jurisprudence Committee meeting in Lubbock. The subject of the hearing was the Committee's interim charge on jury reform, primarily centering on juror questioning, interim deliberations, juror note-taking, and other issues. As you may recall, Committee Chair Senator Jeff Wentworth (R-San Antonio) introduced jury reform legislation in 2007, but the legislation failed to pass. Wade stated that TADC opposes interim deliberations, but was not taking a position on the remaining issues at this time. Wade further indicated that, contrary to the practice in some parts of the state, juror questioning was not practiced in West Texas, but he was open to discussing the issue as long as some parameters were provided. TADC expects that Senator Wentworth will pursue a jury reform bill in the 2009 session.

TADC continues to closely monitor the Texas Supreme Court's rehearing of the Entergy v. Summers case, which is scheduled to take place in Dallas on October 16. Legislative amici Senators Jeff Wentworth and Rodney Ellis (D-Houston), together with Rep. Craig Eiland (D-Galveston) and Bryan Hughes (R-Marshall), have requested speaking time at the rehearing in addition to the time provided to the parties. Regardless of the ultimate outcome of the case, TADC expects that legislation will be introduced dealing with the statutory definition of a "general contractor" and, potentially, the larger issue of statutory employer.

UPCOMING EVENTS

- October 3, 2008** **TADC Board of Directors Meeting**
Wells Fargo Bank Tower - 3rd Floor Auditorium
400 West 15th Street, Austin, Texas
9:30am-1:30pm
- October 3, 2008** **TADC Business/Membership Meeting**
Wells Fargo Bank Tower - 3rd Floor Auditorium
400 West 15th Street, Austin, Texas
1:30pm-2:00pm
- October 2, 2008** **TADC Commercial Litigation Seminar**
POSTPONED UNTIL EARLY SPRING 2009
Mitchell Smith, Program Chair
Hilton Americas – Houston
- October 30, 2008** **San Antonio Legislative Luncheon**
11:45am-1:30pm
Plaza Club of San Antonio
- October 31, 2008** **Amarillo Legislative Luncheon**
11:45am-1:30pm
Amarillo Club
- November 14, 2008** **TADC Civil Justice Forum**
Pat Weaver, Chair
Westin City Center – Dallas
[CLICK HERE](#) for registration materials
- November 14-15, 2008** **TADC Board of Directors Meeting**
Westin City Center – Dallas
- January 16-17, 2009** **TADC Board of Directors Meeting**
Hotel Contessa – San Antonio
- January 28-February 1, 2009** **2009 Winter Seminar**
Robert Sonnier, Program Chair
Sheraton Steamboat Springs – Steamboat Springs,
CO

LEGAL NEWS

TORTS

Trammell Crow Central Texas, Ltd. v. Gutierrez (Tex. 08/29/2008)

Because the attack on the victim was so extraordinarily unlike any crime previously committed at the Quarry Market, Trammell Crow Central Texas could not have reasonably foreseen or prevented the crime and thus owed no duty in this case. Texas Supreme Court, No.

07-0091. *To read this opinion in full [CLICK HERE](#)*

Draker v. Schreiber
(Tex.App. Dist.4 08/13/2008)

As the gravamen of Anna Draker's complaint was one of defamation, the trial court did not err in dismissing her claim for intentional infliction of emotional distress. San Antonio Court of Appeals, No. 04-07-00692-CV. *To read this opinion in full [CLICK HERE](#)*

Columbia Medical Center of Las Colinas, Inc. v. Athenahogue
(Tex. 08/29/2008)

Plaintiffs presented clear and convincing evidence on which a jury could reasonably conclude that the hospital was grossly negligent, but the portion of the judgment awarding loss of inheritance damages is reversed. Texas Supreme Court, No. 04-0575. *To read this opinion in full [CLICK HERE](#)*

CIVIL PRACTICE

Satterfield v. Crown Cork & Seal Company, Inc.
(Tex.App. Dist.3 08/29/2008)

Based on the structure and plain language of the Texas Constitution, as well as the weight of binding precedent, the newly enacted statute that limits the asbestos-related liabilities of certain successor corporations is an unconstitutional retroactive law as applied to Satterfield's claims against Crown Cork. Austin Court of Appeals, No. 03-04-00518-CV. *To read this opinion in full [CLICK HERE](#)*

In re Mallinckrodt, Inc.
(Tex.App. Dist.9 08/14/2008)

The trial court abused its discretion by failing to limit discovery to relevant evidence and ordering discovery that was beyond that discoverable under the Texas Rules of Civil Procedure. Beaumont Court of Appeals, No. 09-08-227 CV. *To read this opinion in*

full [CLICK HERE](#)

INSURANCE LAW

North American Specialty Insurance Co. v. Royal Surplus Lines Insurance Co. (5th Cir. 08/22/2008)

Texas law prohibits stacking policies that do not overlap to provide more coverage than the highest limits of any one policy. 5th U.S. Circuit Court of Appeals, No. 07-20488. *To read this opinion in full [CLICK HERE](#)*

Don' s Building Supply, Inc. v. One Beacon Insurance Co. (Tex. 08/29/2008)

Property damage occurred when a home that is the subject of an underlying suit suffered wood rot or other physical damage. The date that the physical damage is or could have been discovered is irrelevant under the policy. Texas Supreme Court, No. 07-0639. *To read this opinion in full [CLICK HERE](#)*

Federal Insurance Co. v. Samsung Electronics America (Tex. 08/29/2008)

Zurich American Insurance Co. v. Nokia is dispositive in this case, and Federal has a duty to defend Samsung. Texas Supreme Court, No. 06-1040. *To read this opinion in full [CLICK HERE](#)*

Ulico Casualty Co. v. Allied Pilots Association (Tex. 08/29/2008)

If an insurer's actions prejudice its insured, the insurer may be estopped from denying benefits that would be payable under its policy as if the risk had been covered, but the doctrines of waiver and estoppel cannot be used to rewrite the contract of insurance and provide contractual coverage for risks not insured. Texas Supreme Court, No. 06-0247. *To read this opinion in full [CLICK HERE](#)*

HEALTH LAW

Jones v. Ammons

(Tex.App. Dist.5 08/21/2008)

A non-patient's claim, pleaded as a negligence claim for injuries against a hospital, constitutes a health-care liability claim pursuant to Texas Civil Practice and Remedies Code §74.00. *To read this opinion in full [CLICK HERE](#)*

ALTERNATIVE DISPUTE RESOLUTION

Forest Oil Corp. v. McAllen

(Tex. 08/29/2008)

Forest Oil has demonstrated that a valid arbitration agreement exists, an agreement that empowers the arbitrators to determine what issues are arbitrable. Texas Supreme Court, No. 06-0178. *To read this opinion in full [CLICK HERE](#)*

DAMAGES

Hani v. Jimenez

(Tex.App. Dist.5 08/13/2008)

The damages award found by the jury of past damages of \$545,582.00 and \$339,682.00 as future damages was within the range of evidence presented at trial in the medical malpractice case. Dallas Court of Appeals, No. 05-07-01354-CV. *To read this opinion in full [CLICK HERE](#)*