

An Association of Personal Injury Defense, Civil Trial & Commercial Litigation Attorneys - Est. 1960





A thousand things can go wrong out here. We can tell you which one actually did.

S-E-A has been investigating, researching, revealing and replicating the cause of accidents and failures on land and sea for over 40 years.

relative concept. While we aren't capable of changing that, we do have the expertise, experience and ability to find, illuminate and preserve the facts.

It doesn't matter whether it's a cargo ship, an offshore oil platform or a dockside loading machine, the harsh realities are the same.

In the marine environment, permanence is a



For more information please visit us at SEAlimited.com or call Wade Wilson or Dan Orlich at 800-880-7324.

Scientific Expert Analysis™

www.SEAlimited.com

TABLE OF CONTENTS

TADC Calendar of Events
President's Message 3
Local Area Events
TADC Legislative Update
Welcome New Members
Taming The Social Media Beast
TADC PAC Report
2012 Spring Meeting
Amicus Curiae Committee Semi-Annual Report
Papers Available
2012 TADC Trial Academy
TADC Expert Witness Library
2012 TADC Awards Nominations
2012 TADC Summer Seminar
Substantive Law Newsletters



TADC CALENDAR OF EVENTS

June 7, 2012 TADC/Dallas Bar Judiciary Committee Luncheon

The Pavilion at the Belo Mansion - Dallas

June 19, 2012 Austin Area Members' Reception with

the Travis County Judiciary
Guero's Taco Bar – Austin, Texas

July 18-22, 2012 TADC Summer Seminar

The Grand Sandestin Resort – Sandestin, Florida

Darin Brooks & Greg Binns, Co-Chairs

August 3-4, 2012 **Budget/Nominating Committee**

Austin, Texas

August 10-11, 2012 TADC West Texas Seminar

Inn of the Mountain Gods – Ruidoso, New Mexico

September 26-30, 2012 **2012 Annual Meeting**

Westin St. Francis – San Francisco, California Gayla Corley & Mike Hendryx, Co-Chairs

November 9-10, 2012 TADC Board of Directors Meeting

McAllen, Texas

January 18-19, 2013 TADC Board of Directors Meeting

San Antonio, Texas

February 2-6, 2013 **TADC Winter Seminar**

Sheraton Steamboat – Steamboat Springs, Colorado

April 3-5, 2013 TADC Spring Meeting and Legislative Day

Doubletree Suites - Austin, Texas

April 26-27, 2013 **31st Annual TADC Trial Academy**

Sheraton Dallas North – Dallas, Texas

TADC Core Sponsor:



Scientific Expert Analysis™



PRESIDENT'S MESSAGE

by Thomas E. Ganucheau, President Beck, Redden & Secrest, L.L.P., Houston

s American Express has touted for "membership privileges," so too with your membership in the TADC. While membership retention and recruitment continues to be a focus of your TADC Board of Directors, our focus on membership also includes member benefits. Our Programs. Publications. and Legislative Committees, and our Board of Directors, have done an outstanding job through the first half of 2012 in providing value to our members. In addition to our continuing benefits of business relationships, the expert witness database, professional newsletters, and e-updates, our committees and program chairs have and continue to present significant value to our members.

TADC programs are second to none, presenting timely and relevant topics to our practice, top-notch speakers and great opportunities:

- The TADC returned to Crested Butte, Colorado on February 1-5, 2012 in a joint meeting with the Alabama Defense Counsel, for its annual Winter Seminar. The Elevation Hotel provided a fabulous ski-in, ski-out facility and was the perfect venue for the seminar. Many thanks to Max Wright of Hinkle, Hensley, Shanor & Martin, LLP in Midland and Mark Bennett of Strasburger & Price LLP in Frisco for assembling such a distinguished array of presenters on timely and relevant topics.
- ➢ Our 31st Annual TADC Trial Academy was held in Houston in March at the South Texas College of Law. Academy co-chairs Michele Smith of Mehaffy Weber in Beaumont, and Chad Gerke of The Gerke Law Firm in Brenham put on a fantastic trial academy with over 30 young lawyers attending. Many thanks to the numerous lawyers and judges who volunteered their time to serve as faculty members, including Harris County

- District Court Judges Patricia Kerrigan (also a past President of the TADC), and Mark Davidson. In addition to serving as faculty during the presentation portions of the Trial Academy, Judges Kerrigan and Davidson provided talks during the CLE portions of the program. The TADC Trial Academy is a hallmark program designed to give lawyers licensed six years or less practical trial advocacy experience. As opportunities in the courthouse are becoming fewer and farther between, the TADC Trial Academy provides a great service to our young lawyers and their firms.
- > Our Spring Meeting in Santa Fe, New Mexico followed in April and was chaired by Sofia Ramon of the Atlas Hall Rodriguez firm in McAllen, and Randy Grambling of the Kemp Smith firm in El Paso. Sofia and Randy assembled a top-notch slate of presenters, including former member and current Justice of the Thirteenth Court of Appeals, the Honorable Gina Benavides. Attendees and their guests were treated to a special event prior to the welcome reception in the historic Loretto Chapel. Soprano soloist with the Santa Fe Opera, Monika Cosson, performed selected pieces including Ave Maria and Con ti Partiro.
- The 2012 Summer Seminar is just around the corner! This year's seminar will be held at the beautiful Sandestin Beach and Golf Resort in Sandestin, Florida. Sandestin is the perfect family destination with every activity one can imagine. The program, put together by program chairs Greg Binns with Thompson & Knight, LLP in Dallas and Darin Brooks with Beirne Maynard & Parsons, LLP in Houston, features over 9-1/2 hours of CLE, with a focus on our young lawyer members. Speakers include former TADC President Russell

Serafin and Judge R. K. Sandill of the 127th District Court of Harris County, Texas.

- The TADC, through its local board members across the state, has continued to host and sponsor local events. Houston and Fort Worth continue to host monthly get-togethers for its Our East Texas TADC members. members hosted a reception Longview on May 3 honoring newlyappointed Federal Judge Rodney Gilstrap and Magistrate Judge Roy Payne. Upcoming luncheons and happy hours are scheduled in Houston. Beaumont and Austin, while our Dallas members will be joining with the Dallas Bar Association Judiciary Committee for a luncheon presentation on the proposed rules on expedited trials and motions to dismiss. If you would like a program held in your area, contact the TADC office (tadc@tadc.org) and we will do our best to accommodate your request.
- The second installment of our West Texas Seminar is scheduled for August 10-12, 2012 in Ruidoso, New Mexico. This seminar is an excellent opportunity to get younger lawyers involved in TADC, as it is designed with a very low registration fee (\$125.00) and affordable accommodations and travel so younger lawyers can attend and bring their families.
- ➤ Our Annual Meeting will be held on September 26-30, 2012 at the St. Francis Hotel in San Francisco, California. Program chairs Gayla Corley and Mike Hendricks have assembled a top tier slate of speakers, including Texas Supreme Court Justice Phil Johnson and Judge Pat Kerrigan of the 190th District Court of Harris County, Texas.

One of the most underestimated (and unheralded) member benefits is our <u>Legislative Program</u>. The TADC and its Legislative Committee continue to be involved with interim study hearings in Austin and around the state. The TADC recently provided written testimony

to the House Civil Jurisprudence Committee on its charge of "alternative litigation financing," and has been in communication with the legislators on numerous other issues raised in the interim studies. Your TADC Legislative Committee stands ready to protect and preserve the Texas Civil Justice System by addressing any issue that may come up which may impact our system of justice.

Our Publications Committee continues to provide significant benefits to our members, not only through e-updates and our regularly-published magazines, but most recently by three new efforts.

- First, the TADC is now on Facebook. Please join us on Facebook and check out our recent activities posted online. http://www.facebook.com/tadclawyers
- Second, the TADC is now on Linkedin! Our Linkedin page, which is for members only, will provide a forum for our members to communicate about issues affecting their practices, and to share information, thoughts and strategies. Please join us on Linkedin today.
- Finally, the TADC will be rolling out later this year its new website. The new website will be designed to be more user friendly, and will allow members to not only pay dues online, but register for meetings and order papers online.

The TADC is the largest state organization of defense attorneys in the country and is in a position to seriously impact public policy. I encourage you to get involved in the TADC and help to protect and preserve our civil justice system. We also need your help in spreading the word about all of the benefits the TADC has to offer and in securing new members for our organization. We encourage you to get involved. The TADC is the only voice of the defense bar in Texas. We need your help to keep the TADC strong.

Finally, please contact me or the TADC office throughout the year if you have any questions or if we may be of any service to you.

LOCAL AREA EVENTS

Houston Events at Hughes Hanger & Crapitto's Cucina

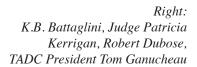




Left: John Bissell & Peggy Brenner

Below: Judge Randy Wilson & Bill Sharp

Above: Stacey Van Camp & Seth Isgur







TADC, ETTLA and the T. John Ward Inn of Court host a reception for U.S. District Judge Gilstrap and Magistrate Judge Payne in Longview

Below: Don Kent, Judge Rodney Gilstrap, Magistrate Judge Roy Payne & TADC President Tom Ganucheau





Above: Laureen Bagley, Michael Smith, Nicholas Mathews, Christopher Ponder, Justin Smith, Andrew & Ashley Pate



TADC Legislative Update

By George S. Christian, TADC Legislative Consultant

Primary Shows Strength of Conservative Voters

he long-awaited May 29 primary has produced a mixed bag of results, but there is no question that conservative voters had a significant impact on the results.

In the night's most anticipated contest, former State Solicitor General Ted Cruz pushed Lt. Governor David Dewhurst into the July 31 runoff election. Despite spending more than \$8 million of his own money, Dewhurst could only muster 44.5% of the vote, to Cruz's 34.2%. Former Dallas Mayor Tom Leppert ran third, garnering 13.3%. Dewhurst now faces the prospect of a late July primary election against a motivated and well financed challenger with Tea Party credentials and a national following, which includes Sarah Palin, Sean Hannity, and other big names in conservative circles. The Lieutenant Governor's challenge is to turn out enough supporters in the middle of the summer to offset Cruz's dedicated electorate. That will be no easy task. On the Democratic side, former State Rep. Paul Sadler will face Grady Yarborough in the runoff, but even if Sadler prevails, he will have a long uphill struggle to break through in a fire-engine red state.

To the dismay of the Republican establishment, Texas Supreme Court Justice David Medina was likewise forced into the runoff, where he will face former Harris County District Judge John Devine. Justice Medina appears to be facing the same difficulty that defeated former Supreme Court Justice Xavier Rodriquez

(beaten by Steve Smith) and former Railroad Commissioner Victor Carillo (beaten by David Porter). The good news for Medina is that he remains popular in Harris County, where Devine is best known. But it will be a tough race. Speaking of Steve Smith, Justice Don Willett easily won re-election over Smith with almost 57% of the vote. Justice Nathan Hecht was unopposed.

In other statewide races, incumbent Texas Railroad Commissioner Barry Smitherman must face the relatively unknown Greg Parker in the runoff. In the open Railroad Commission seat, Christi Craddick, the daughter of former House Speaker Tom Craddick, and former State Rep. Warren Chisum survived a large field to stand again in July.

Moving to the Texas Senate, the bitter GOP primary contest between Sen. Jeff Wentworth (R-San Antonio) and two challengers, former Railroad Commissioner Elizabeth Ames Jones and physician Donna Campbell will go to a runoff. Wentworth led the field with almost 36%, with Campbell at 34%. Although heavily financed by Texans Law Reform, Jones finished third and out of the running. This race was viewed largely as a proxy war between TLR and Wentworth, and we can expect TLR to get behind Campbell in an effort to unseat the longtime incumbent.

As we have discussed before, the Texas Senate will be a much different place in 2013, given the unusually large

number of incumbents seeking other offices or retirement. In the four open seats, the winners are Rep. Ken Paxton (who replaces Florence Shapiro); Rep. Kelly Hancock, who defeated State Rep. Todd Smith to win the seat vacated by Sen. Chris Harris; Rep. Larry Taylor, who replaces Sen. Mike Jackson (who lost a race for Congress); and Rep. Charles Schwertner (R-Georgetown), who takes Sen. Steve Ogden's seat. In what promises to be a hotly contested Senate race in the fall, Rep. Mark Shelton squares off against incumbent Senator Wendy Davis (D-Fort Worth). Senate incumbents easily winning re-election include Robert Duncan (R-Lubbock), Craig Estes (R-Wichita Falls), Tommy Williams (R-The Woodlands), Robert Nichols (R-Jacksonville), and Kel Seliger (R-Amarillo).

The election of Paxton, Taylor, Hancock, and Schwertner (and possibly Shelton, if he takes out Davis) will move the Senate somewhat further in a conservative direction, but the effect of this shift remains unclear. Moreover, the Lieutenant Governor's precarious position in the U.S. Senate race opens up the very real possibility that he will be back in the President's chair in January, but this, of course, remains to be seen. In any event, expect some interesting alignments when four or five "housebroken" senators take their seats next time.

On the House side, numerous changes are in store. Speaker Joe Straus (R-San Antonio) easily survived a primary challenger funded largely by Tea Party interests. But Tea Party candidates also had successes, defeating incumbents Vicki Truitt (R-Keller), Rob Eissler (R-The Woodlands), Hamilton Mike Mauriceville), and Barbara (R-Nash Arlington). On the other hand, what might be considered "establishment" candidates defeated Tea Party-backed candidates in several districts. For example, former Marshall mayor Chris Paddie defeated long-time incumbent and Tea Party favorite

Wayne Christian, rancher Ken King forced Rep. Jim Landtroop (R-Plainview) into a runoff, and one-term incumbent Rep. Marva Beck (R-Centerville) fell to Lufkin businessman Trent Ashby. In another race of interest, TADC member Travis Clardy of Nacogdoches forced longtime incumbent Rep. Chuck Hopson (R-Jacksonville) into a runoff. Other incumbents who must defeat runoff challengers also include Rep. Sid Miller (R-Stephenville) and Rep. J.M. (R-Kingsville). Lozano One other incumbent who lost his seat was Rep. Leo Berman (R-Tyler).

As of today, there are 16 new House members, including one who has served previously (Chris Turner), with more to come following the July runoff. Of the 16 House runoff races, 13 involve open seats, while the remainder involves incumbents. In any event, the new House member tally could top 30 in January.

The takeaway for the House is somewhat inconclusive. but probably well bodes for Speaker Straus. Conservative groups seeking to oust the Speaker won some but by no means all races they participated in. Moreover, although some of Straus's supporters lost their seats, many were re-elected, and it's a good bet that a majority of the newly elected members will back, the Speaker as well. The overall make-up of the House does not appear to have changed much, but with the very large number of new and one-term members, it will be interesting to see how long it takes to get things organized come January.

Several TADC members sought congressional office. Mike Truncale and Jay Old finished just out of the runoff in the new Congressional District 14. Pete Gallego won a spot in the runoff with former Congressman Ciro Rodriguez in District 23, which stretches from San Antonio to El Paso. Another point of interest: Congressman Lloyd Doggett, the man the GOP would most like to beat.

easily prevailed even though his district was drawn to elect a candidate from San Antonio.

In Court of Appeals races around the state, Ann McClure won an unexpired term for chief justice of the 8th Court; Rebecca Martinez wins a spot on the November ballot for the 4th Court; and Marcos Lizarraga will face Yvonne Rodriguez for McClure's seat on the 8th Court. On the GOP side, Tom Gray won re-election as chief justice of the 10th Court; Scott Field won the right to challenge incumbent Justice Diane Henson for the 3rd Court; David Evans and Bill Whitehill made the runoff for an open seat on the 5th Court, while David Lewis knocked off incumbent Martin Richter for

Place 9 on that court; Bailey Moseley won re-election to the 6th Court; Mike Willson won an unexpired term on the 11th Court; and Brad Condit defeated Jaime Tijerina for the GOP nomination for Place 4 on the 13th Court.

Once again, the runoff election will be held in the dead of summer and height of the vacation season, Tuesday, July 31. One cannot but think that voter turnout will be incredibly sparse, meaning that the candidates who most successfully turn out their votes are almost certain to win. This bodes well for those with organized ground games, as opposed to those who rely on advertising blitzes to get their faces before voters.

TADC 2011-2012 Membership Drive Promotion!

The TADC is proud to announce the 2011-2012 Membership Drive Promotion! As we spread the word about the value of being a TADC member, we're making building the TADC membership fun.

- Each TADC member who sponsors a new member will receive one entry in a <u>drawing for a new iPad!</u> There is no limit to the number of entries a current TADC member will receive, so don't be shy in your recruiting efforts!
- > Also, each new member will receive an entry in the drawing.
- > The 2012 Membership Drive Promotion runs until September 15, 2012, and the winner of the drawing will be announced at the 2012 Annual Meeting in San Francico (an email announcement will follow). All members who have sponsored new members since October 1, 2011 are eligible for this promotion!

Sign Up A New Member Today!



TEXAS ASSOCIATION OF DEFENSE COUNSEL, INC. An Association of Personal Injury Defense, Civil Trial & Commercial Litigation Attorneys ~ Est. 1960

400 West 15th Street, Suite 420, Austin, Texas 78701 512/476/5225 Fax 512/476-5384 Email: tadc@tadc.org

Mr. Mrs.		hereb	by apply for membershi	p in the Association	and certify that I am
time to the practice claimant oriented a improvements in th	Please print standing of the State Bar of a configuration of the State Bar of a configuration of configuration, group, or firm. e administration of justice, to a nation, and to maintain the	Injury Defense and further agree to su increase the quality	Commercial Litigation pport the Texas Assortion of service and contribution	. I am not now a ciation of Defense ution which the lega	member of any plaintiff or Counsel's aim to promote il profession renders to the
Preferred Name (if	Different from above):				
Firm:					
Office Address:			City:		Zip:
Main Office Phone:	1	Direct Dial:	1	Office Fax:	1
Email Address:				Cell Phone:	1
Home Address:			City:		Zip:
Spouse Name:				Home Phone:	1
Bar Card No.:	\	'ear Licensed:	Birth Date:		□ DRI Member?
	\$ 50.00 Licensed les \$ 35.00 Licensed les		date of license) date of license) date of license) sidered paid for the follo	\$295.00 Licensed \$100.00 Licensed fi \$ 50.00 Licensed fi \$ 35.00 Licensed fi wing year. However	ve years or more ve years or more ve years or more
Applicant's signat	ure:			Date:	
Signature of App	olicant's Sponsor:				
(TADC member)	Please type name under signature				
I agree to abide by	the Bylaws of the Association	and attach hereto m	y check for \$	OR-	
Please charge \$	to my	/isa □ MasterCa	rd American Exp	ress	
Card #:			Exp. Date: /		
Texas Associ	pplication with payment to: ation of Defense Counsel, In Street, Suite 420 5 78701	nc.			
Referring TADC M	ember:	(print nam	_		

WELCOME NEW MEMBERS!

Nathan Aduddell, Thompson & Knight LLP; Dallas

Julie Albright, Coats Rose Yale Ryman & Lee, P.C.; Houston

Jes Alexander, Fletcher, Farley, Shipman & Salinas, LLP; Dallas

Stacie Augustine, Strong Pipkin Bissell & Ledyard, L.L.P.; Beaumont

Mary Wahne Baker, Hinkle, Hensley, Shanor & Martin, L.L.P.; Midland

Ryan C. Bueché, Germer Gertz, L.L.P.; Austin

Priscilla Camacho, Plunkett & Gibson, Inc.; San Antonio

Lynn Castagna, Castagna Scott LLP; Austin

Robert Dubose, Alexander, Dubose & Townsend; Houston

Daniel G. Durell, Craig, Terrill, Hale & Grantham, L.L.P.; Lubbock

Amanda J. Ellis, Kemp Smith, LLP; Austin

Charlotte A. Fields, Gieger, Laborde & Laperouse, LLC; Houston

Robert Ford, Beck, Redden & Secrest, L.L.P.; Houston

Eddie Garza, Esparza & Garza, L.L.P.; Brownsville

Tommy W. Gillaspie, Phillips Akers Womac; Houston

John E. Hernandez, Fulbright & Jaworski L.L.P.; San Antonio

Rocio Hernandez, Mayo Mendolia & Vice L.L.P.; Royse City

Neal Hoffman, Bush & Ramirez, L.L.C.; Houston

Emily Hollenbeck, Ray, Valdez, McChristian & Jeans, PC; Fort Worth

Preston D. Hutson, Hays, McConn, Rice & Pickering, P.C.; Houston

Seth Isgur, Fulbright & Jaworski L.L.P.; Houston

Tekla O. Mann, Kemp Smith LLP; El Paso

Jason McLaurin, Strong Pipkin Bissell & Ledyard, L.L.P.; Houston

Evan A. Moeller, Hirsch & Westheimer, P.C.; Houston

Paul Myers, Strasburger & Price, L.L.P.; Frisco

Roger Oppenheim, Lorance & Thompson, P.C.; Houston

Ashley N. Pate, Potter Minton A Professional Corporation; Tyler

Edward J. Patterson III, Fulbright & Jaworski L.L.P.; Houston

Kurt G. Paxson, Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.; El Paso

William Peterson, Beck, Redden & Secrest, L.L.P.; Houston

Brett Sander, U.S. Army Claims Division; Fort Hood

Ashley Senary, Fulbright & Jaworski L.L.P.; San Antonio

Clark Smith, Beck, Redden & Secrest, L.L.P.; Houston

Blake W. Stribling, Fulbright & Jaworski L.L.P.; San Antonio

Peter Tipps, Fulbright & Jaworski L.L.P.; Houston

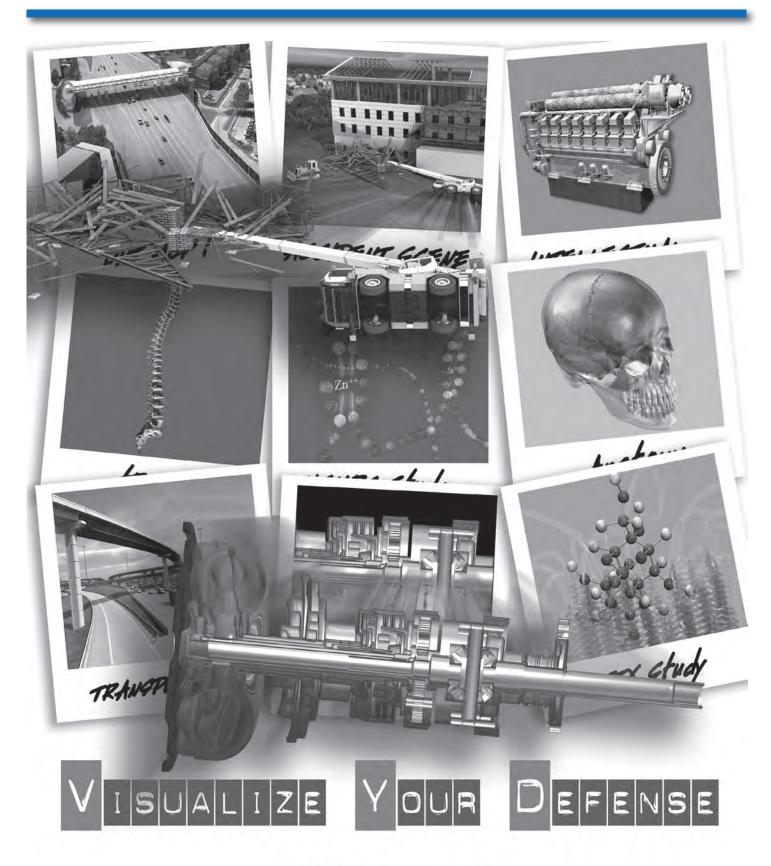
Joe D. Tolbert, Harris, Finley & Bogle, P.C.; Fort Worth

Giselle S. Torres, Bracewell & Giuliani L.L.P.; Houston

Dannick Hernandez, Plunkett & Gibson, Inc.; San Antonio

Tennessee Walker, Harris, Finley & Bogle, P.C.; Fort Worth

Gordon K. Wright, Cooper & Scully, P.C.; Dallas





214-346-6365 / www.halff.com Jeff Christiansen / jchristiansen@halff.com



Taming The Social Media Beast

By Heidi Coughlin Wright & Greenhilll, P.C., Austin

In the aftermath of Facebook's public offering, one cannot turn on the TV or open a newspaper without seeing a story about social media. Facebook, the largest such website, currently boasts 901 million active users per month. According to company statistics through March 2012, 398 million users were active on at least six of seven days.

Twitter, Facebook's hipper, younger cousin, claims 140 million active users generate 340 million tweets per day. ² LinkedIn, the social media site catering to the white-collar set, markets itself as the world's largest professional network, with 161 million members in over 200 countries. ³ According to LinkedIn, professionals sign up for the service at a rate of approximately two people per second.

Social media is omnipresent. If it hasn't yet, it will undoubtedly creep into your practice. Rather than bemoan the good old days when lawyers were not forced to scour the internet before taking a case to trial, the wise practitioner uses these developing technologies to her advantage. With this in mind, consider these common-sense measures to tame the social media beast as it inevitably rears his ugly head in your cases.

First and most obviously, when you receive a new case, discuss with your client his presence on the internet. Ask questions like, "Do you have a Facebook profile, Twitter account, or MySpace page?" "What are your privacy settings?" and, "What type of information do you share publicly?"

Regardless of the client's answers, it is most prudent to verify. Oftentimes, a client believes his privacy settings are sufficient to prevent public disclosure, but frequently personal information is unknowingly revealed. While the lawyer cannot instruct the client to destroy any information that would otherwise be discoverable, selection of the most stringent privacy settings is advisable to make personal data less accessible to third party searches.

Secondly, in investigating preparing the new case, review the internet for relevant, accessible information. A simple Google search will often reveal a wealth of facts about a person or entity. Be sure that the search results relate to the correct person by looking for identifying characteristics, and think critically about your case facts to determine which sites would be most fruitful for your particular situation. For example, a professional person or an expert witness would likely have a profile on LinkedIn, while many musicians and artists use Twitter or MySpace to self-promote.

Keep in mind that the information you acquire must be obtained ethically. "Pretexting" is the term used to refer to lawyers who disguise their identity in order to "friend" a target or to ask someone else to "friend" a target with the goal of viewing his or her online profile. "Pretexting" is a way of gaining information under false pretenses, and rulings from other jurisdictions suggest this practice violates

http://newsroom.fb.com/content/default.aspx ?NewsAreaId=22

https://business.twitter.com/en/basics/whatis-twitter/

³ http://press.linkedin.com/about

Texas Disciplinary Rules of Conduct 4.01, 5.03(b), and 8.04(a)(1)&(a)(3).

After completing the initial online research, consider whether a request for information contained on a person's social media sites would be relevant or useful. Personal injury cases--particularly alleging mental anguish--lend themselves to social media discovery; however, social media information can be relevant to all types of cases if the parties involved frequently use the internet to document their lives. Information obtained from Facebook or Twitter often reveals a person's thoughts. moods, attitudes, and activities over a long period of time. In essence, these sites are public diaries complete with pictures and dialogue.

Requests for Production of Documents and Interrogatories should be crafted to target the kind of information that is relevant to your case, specifying which sites are likely to produce meaningful results. Avoid questions that are too broad or harassing and consider limiting your requests to a specific period of time.

Avoid undue intrusion; but when in doubt, it is probably wise to request social media information. This field remains something of a grey area, as developments in case law on social media discovery are slow moving. Currently, Texas law is unclear regarding the discovery of social media information, though there are two out-of-state cases that offer particularly useful guidance for these kinds of discovery disputes.

In Romano v. Steelcase Inc.,⁴ Defendant sought access to Plaintiff's current and historical Facebook and MySpace pages and accounts, requesting all deleted pages and related information. The Defendant requested the information based "upon the grounds that Plaintiff has placed certain information on these social networking sites which is believed to be inconsistent with her claims in this action concerning the extent and nature of her

injuries, especially her claims for loss of enjoyment of life."

In Romano, the court reasoned that this information was both material and necessary to the defense of the action and/or could lead to admissible evidence:

In this regard, it appears that Plaintiff's public profile page on Facebook shows her smiling happily in photograph outside confines of her home despite her claim that she has sustained permanent injuries and is largely confined to her house and bed. In light of the fact that the public portions of Plaintiff's social networking sites contain material that is contrary to her claims and deposition testimony, there is a reasonable likelihood that the private portions of her sites may contain further evidence such as information with regard to her activities and enjoyment of life, all of which are material relevant to the defense of this action. Preventing Defendant from accessing Plaintiff's private postings on Facebook and MvSpace bluow be in direct contravention to the liberal disclosure [laws].

In *E.E.O.C. v. Simply Storage Mgmt*,⁵ the EEOC brought a Title VII action on behalf of employees against their employer, alleging severe emotional distress caused by the sexual discrimination of a supervisor. A discovery dispute arose regarding the defense attorney's request for information contained on claimants' Facebook and MySpace profiles.

⁴ *Romano v. Steelcase Inc.*, 30 Misc. 3d 426, 907 N.Y.S.2d 650 (N.Y. Sup. Ct. 2010).

⁵ E.E.O.C. v. Simply Storage Mgmt., LLC, 270 F.R.D. 430 (S.D. Ind. 2010)

The court reasoned that social media content is not shielded from discovery simply because it is "locked" or "private":

Although privacy concerns may be germane to the question of whether requested discovery is burdensome or oppressive and whether it has been sought for a proper purpose in the litigation, a person's expectation and intent that her communications maintained as private is not a legitimate basis for shielding those communications from discovery...those interests can be addressed by an appropriate protective order.

The court went on to say that it was reasonable to expect severe mental trauma to manifest itself in social media content. and that an examination of such content might reveal whether and when the onset of trauma occurred. The court held that the proper scope of discovery in such a case was wide indeed, and that it included online photos, videos, and the claimant's verbal communications (i.e., status updates, wall comments, groups joined, activity streams, blog entries) which, in the court's words, "reveal, refer, or relate to any emotion, feeling, or mental state, as well as communications that reveal, refer, or relate to events that could reasonably be expected to produce a significant emotion, feeling, or mental state."

Such broad discovery would encompass almost any photograph posted online (what picture does not reveal the subject's mental state?) as well as the majority of written communications.

After research and discovery to obtain relevant social media information, it will be necessary to lay a predicate for admission at trial. Again, this is an area where Texas case law does not offer much direction, however, federal cases can be analyzed for helpful guidance.

Lorraine v. Markel Am. Ins. Co., 6 has been cited over 600 times. This is such a lengthy opinion that discussing it falls outside the scope of this limited article; however, Lorraine offers a detailed analysis and helpful guide for admitting e-mail, internet website postings, text messages, chat room content, computer records, and many other kinds of digital data. The case does not specifically describe admission of social media information, though it can be a general primer consulted as admissibility of such materials. Since these technologies are evolving so rapidly and case law is developing almost daily, the prudent lawyer seeking admission of electronic information should consult local case law immediately prior to trial or hearing.

In the end it does not really matter whether Facebook and similar websites constitute a passing fad or a life-altering technology. The sheer number of people who regularly use these sites means that sooner or later, like it or not, even the most Luddite lawyer will have to match himself against the beast.



⁶ *Lorraine v. Markel Am. Ins. Co.*, 241 F.R.D. 534 (D. Md. 2007).

2012 SPRING MEETING

Inn & Spa at Loretto - April 25-29, 2012 - Santa Fe, New Mexico

The TADC held its 2012 Spring Meeting in Santa Fe, New Mexico, April 25-29, 2012 The Inn and Spa at Loretto provided the perfect venue for the meeting. Members and their spouses and guests were treated to a special, pre-welcome reception performance in the historic Loretto Chapel by Santa Fe Opera soprano Monika Cosson. Ms. Cosson, accompanied by a string quartet, voiced favorites such as "Con ti Partiro" and "Pie Jesu", finishing with an *a capella* rendition of "Amazing Grace".

Sofia Ramon, with the McAllen law firm of Atlas, Hall & Rodriguez, L.L.P. and **Randy Grambling** with the El Paso firm of Kemp Smith LLP. did a masterful job as Program Co-Chairs of the Meeting. Topics ranged from "Social Networking" and the "Law to Effective Voir Dire", a panel discussion on "Expedited Jury Trials" and former TADC member **Justice Gina Benavides** from the Thirteenth Court of Appeals spoke to attendees on effective appeals









TADC PAC REPORT

By Dan K. Worthington, Chairman Atlas & Hall, L.L.P.; McAllen

As I sat down at my computer to lay out our expectations for next session and to remind all of us why our time and money is so desperately needed, I couldn't help but think about the Texas Senate race in San Antonio where Senator Jeff Wentworth is being mislabeled a liberal enemy of tort reform serving at the whim of the Plaintiff's bar. In what "Alice in Wonderland" type of world do we practice where Senator Wentworth is a liberal activist trying to advance the Plaintiff's lawyer agenda? It is the upside-down world created by the same folks who pushed for a "gamed" system under the banner of tort reform last session.

What do we expect? Those who spent in excess of \$6,000,000 trying to elect only legislators who follow their agenda aren't going away. We expect continued efforts to close the courthouse doors under the guise of tort reform.

Why is your time and money required? Unlike those who seek to close the courthouse doors, we do not base our needs by evaluating the "ROI." The truth is, there is no way to calculate the "return on investment" for doing what is right and standing up for our civil justice system. Having said that, we are very careful with your money and squeeze every bit of value from every dollar.

The question isn't what can we afford to give... the real issue is what can we not afford to give. Time is the commodity that most of us do not have time to give. If you do not, please make a monetary contribution. While we do more with less, there is a minimum amount of money to support our judicious giving and your help is needed to reach that goal. If we received only \$100 from every member we would be in a great financial position; however, not every member is in the position to make even the smallest contribution. Let's pick up the slack; we are asking each member who can give, to contribute your fee from one billable hour. If you will do this, we commit to spend as much time as it takes to communicate our message to the legislature.

We wisely ignored the conventional wisdom prior to the 2011 legislative session that the Legislature would be so overwhelmed with the budget, redistricting and voter i.d. (just to name a few) that there would be little energy or time for any substantive tort reform. As it turned out, there were a number of bills whose implementation would have resulted in the foreclosure of access to a civil jury by a litigant with a genuine claim. Alone, the TADC brought the defense perspective to many of these proposals.

In the coming session, we intend to bring the same single-mindedness to our tasks. We fully expect repeated efforts at draconian "reform" which died last session"

- We expect some version of the Voluntary Compensation Plan to be revisited.
- Rumors have circulated that "no-fault" insurance might return as a proposal this session.
- As always, "paid or incurred" is on the agenda and we are working toward a revision of CPRC 18.001 and 18.002 so that we can clarify how it interacts with CPRC 41.0105 and we can adjust the inequity in the relative burdens on the Plaintiff and Defendant in who can execute the affidavit and counter-affidavit (and the timing of such filings) under the rule as it is currently drafted.

We are the steady hand that is needed to keep the system balanced. Today we confront the foreclosure of meritorious claims, but when the pendulum swings back (and it will), we will stand against those who promote flooding the system with frivolous claims. We are worthy of your support and take seriously the burden of maintaining all of our collective reputations.

Texas Association of Defense Counsel PAC



The Political Action Committee of the Texas Association of Defense Counsel

THE TADC WILL WORK TIRELESSLY DURING THE LEGISLATIVE SESSION PROTECTING THE CIVIL JUSTICE SYSTEM! Show Your Support for the TADC PAC

Your contribution allows the TADC PAC to support *Qualified* candidates for the Texas Supreme Court, Texas Legislature & other key positions

CAN YOU AFFORD NOT TO CONTRIBUTE?

- Over 95% of Candidates & Incumbents Supported by the TADC PAC are elected to office
- The TADC PAC supports candidates based on record & qualifications, NOT political affiliation
- The TADC PAC supports candidates who favor a strong and independent judiciary, oppose infringement on the right to jury trials and agree with the need to preserve the civil justice system.
- The TADC PAC opposes Statutory Employer and Collaborative Law Legislation
- The TADC PAC supports efforts to end the capricious enforcement of arbitration clauses and to limit their applicability to matters where the parties to the agreement have equal bargaining power
- Your PAC Trustees represent Your interests to candidates and office holders
- Other Associations ARE giving; if you don t, that WILL put you at a distinct disadvantage

As a thank-you for your support, contributions of \$200 or more will receive a gift, a high quality Polo shirt embroidered with the TADC Brand

I BACK THE TADC PAC

Enclosed is my TADC PAC Contribution in the amount of:

\$150.00	\$200.00	\$250.00	(Other \$	
Yes, My contribution is	s for \$200.00 or more, please	send me the Polo with	h the TADC Brai	nd	
SIZE (mens & womens sizes): please check your size carefully, as Make checks payable to the TADC TADC, 400 West 15 th Street, Suite	there are no refunds or exch	nd payment to the	4 Check	Payment Enclosed: \$amount enclosed I am paying by: (circle one) Visa Mastercard	Amex
Name					
Firm			Cardnumber		Exp. Date
Address					
City/State/Zin			Signature as it a	innears on card	

AMICUS CURIAE COMMITTEE SEMI-ANNUAL REPORT



By Roger Hughes, Chair Adams & Graham, L.L.P., Harlingen

he year has been active for the TADC amicus curiae committee and there have been several significant amicus submissions.

On July 1, 2011, the Texas Supreme Court handed down its eagerly awaited opinion in Haygood v. Escabedo, No. 09-0377 (Tex., July 1, 2011) that construes the "paid or incurred" statute on damages. Texas Civil Practice Remedies Code, §41.0105. In a carefully written opinion, the Court agreed with the position advocated in TADC's amicus brief authored by J. Mitchell Smith (Germer Gertz, LLP). In Haygood, Haygood's medical bills had been reduced from \$110,069.12 to \$27,793.42 because he was a Medicaid recipient. The trial court denied Escabedo's motion to exclude evidence of any amount above what was paid or owed after the Medicaid reduction. The jury awarded \$110,069.12 for past medical expenses and the trial court granted judgment for that amount. Tyler court of appeals held §41.0105 precluded evidence of or recovery for any amount over what Haygood paid or will be liable for. The Supreme Court agreed. The claimant has filed a motion for rehearing which was denied recently.

J. Mitchell Smith and Frank Messina (Germer Gertz) filed an amicus brief in support of Enterprise Texas Pipeline's petition for review in *Wolf Hollow I, .P. v. El Paso Marketing, L.P.*, 329 S.W.3d 628 (Tex. App.—Houston [14th Dist.] 2010, pet.

granted). The case presents a fascinating question concerning construction of tripartite gas pipeline delivery contracts that incorporate public tariffs and imposing common law duties on the pipeline's delivery obligations that trump contract provisions that limit or waive liability. This also important because it case is addresses the lines between contract and tort causes of action to allow the buyer to avoid contract limits on recovery and damages. The Supreme Court granted review and argument was February 8, 2012.

Ruth Malinas (Plunkett & Gibson) and Roger Hughes (Adams & Graham) filed an amicus brief in support of the petition for mandamus in In re Toyota Motor Sales USA, Inc. Case No. 10-0933. This mandamus raises the question of review by mandamus of the sufficiency of the grounds for granting a new trial. The trial court vacated a defense verdict and granted a new trial in a product liability case, ostensibly because the defense improperly offered evidence of that failure to use seatbelts. Toyota argues that plaintiff admitted the evidence without objection and the ground is a pretext.

Michael Eady (Thompson Coe) filed an amicus brief in support of *Kia Motors Corp. v. Ruiz*, 348 S.W.3d 465, 474 (Tex. App.—Dallas 2001, pet. filed). This is a fascinating statutory interpretation case. Tex. Civ. Prac. & Rem. Code. §82.008 creates a rebuttable presumption of no liability if a product complies with

mandatory government safety standards applicable to the product and to that specific risk. The question is whether §82.002 applies to 'performance standards,' i.e., a government mandated standard that the product pass a test rather than follow a specifically mandated design. The Dallas Court concluded §82.008 did not apply to 'performance standards,' which is directly contrary to a U.S. Fifth Circuit decision. The Supreme Court has requested merits briefs.

William Little (Mehaffy Weber) filed an amicus to support the petition for mandamus in *In re Smile Center, P.A.*, Case No. 12-0219. This mandamus case challenges the failure to sever dental malpractice claims by 23 children who brought one lawsuit. The 23 minors went to various branch offices and were treated by different dentists for different problems. The 'link' between claims is an allegation that the clinic did unnecessary procedures as part of a scheme to over-bill low-income medical care and insurers. The trial court denied severance without prejudice and allowed discovery to proceed. This case will focus on the standards for severance, especially at the beginning of discovery.



TADC Amicus Curiae Committee

Roger W. Hughes, Chair, Adams & Graham, L.L.P.; Harlingen

Ruth Malinas, Plunkett & Gibson, Inc.; San Antonio

R. Brent Cooper, Cooper & Scully, P.C.; Dallas

Scott P. Stolley, Thompson & Knight, L.L.P.; Dallas

Bob Cain, Zeleskey, Cornelius, Hallmark, Roper & Hicks, L.L.P.; Lufkin

Mitch Smith, Germer Gertz, L.L.P.; Beaumont

Jeff Alley, Windle Hood, Alley, Norton, Brittain & Jay, L.L.P.; El Paso

Mike Eady, Thompson, Coe, Cousins & Irons; Austin

Tim Poteet, Chamberlain ◆ McHaney, Austin

William Little, Mehaffy Weber PC; Beaumont

Richard B. Phillips, Jr., Thompson & Knight, L.L.P.; Dallas

George Vie III, Mills Shirley, L.L.P.; Galveston

PAPERS AVAILABLE

2012 TADC Winter Seminar – Crested Butte, CO – February 1-5, 2012

Developing Non-Compete Law in Texas – Michael S. Alfred – 23 pgs.

The View from (Behind) the Bench – Mary W. Baker – 15 pgs.

Social Media as a Tool for Business (no need to be afraid) – Heidi A. Coughlin – 52 pgs.

The Jury System – Greg Curry – 26 pgs.

The Fair Credit Reporting Act: Who Knew? – Paul Myers – 92 pgs.

Electronic Evidence – Rick Robertson – 73 pgs.

Prepare Your Witness to Win – Diane K. Shaw – 83 pgs.

Supreme Court Update – Justice Phil Johnson – 100 pgs.

Texas Supreme Court Update – Scott P. Stolley – 39 pgs.

10 Commandments of Summary Judgment Practice in Texas State Court: An Outline – Brianne Watkins – 13 pgs.

Hottest Issues in Employment Law – Christopher W. Weller – 32 pgs.

2012 Spring Meeting - Santa Fe, NM - April 25-29, 2012

Stop! In the Name of Appeals – Justice Gina M. Benavides – 8 pgs.

What a Tangled Web We Weave: Ethical Pitfalls in Fielding Unsolicited Requests for Legal Representation – Gayla Corley – 11 pgs.

Investigation of Catastrophic Truck Accidents – Carl H. Green – 47 pgs.

A Practical Guide to the Resolution of Claims Involving Medicare Beneficiaries – Frank N. Luccia – 48 pgs.

The Runaway Jury and the Brethren: How to Get that Adverse Verdict or Judgment Ready for Appeal – Michelle E. Robberson – 12 pgs.

Dram Shop Litigation in Texas – Mark E. Stradley – 16 pgs.

2012 Spring Meeting - Continued

HIPAA, HITECH and House Bill 300 – Susan Sullivan – 11 pgs.

Facebook, Twitter and Social Networking Sites – What to Ask for and How to Get It – Stacey Van Camp – 11 pgs.

Derailing the Train: Anti-SLAPP Issues in Texas Business Tort Litigation – Mark C. Walker – 22 pgs.

Paid or Incurred – Dan K. Worthington, Milton Colia – 47 pgs.

Hottest Issues in Employment Law – Christopher W. Weller – 32 pgs.

COST OF PAPERS					
10 pages or less\$10.00	1 41-65 pages \$40.00				
11-25 pages\$20.00	66-80 pages\$50.00				
26-40 pages\$30.00	81 pages or more \$60.00				

HOW TO ORDER

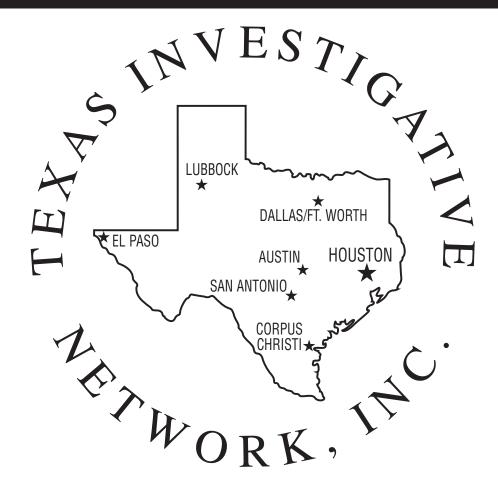
YOU MAY ORDER THESE PAPERS BY FAX, E-MAIL, OR U.S. MAIL.

Please indicate the title of the paper, the author & meeting where the paper was presented when ordering. TADC will invoice you when the papers are sent. Papers will be sent to you via email unless otherwise requested.

A searchable database of papers is available on the TADC website:

www.tadc.org





DISCREET, PROFESSIONAL

INVESTIGATIONS

RESULTING IN

COURT-ADMISSIBLE EVIDENCE

SPECIALIZING IN

SURVEILLANCE

www.texasinvestigators.com

(713) 807-8811

TEXAS STATE LICENSE #A-7516
NATIONAL & INTERNATIONAL CAPABILITIES

BILL PELLERIN

President
bpellerin@texasinvestigators.com

2012 TADC TRIAL ACADEMY

Michele Smith, with Mehaffy Weber, PC in Beaumont and **Chad Gerke** with The Gerke Law Firm, PLLC in Brenham, served as Co-Chairs of TADC's 30th Trial Academy which was held in Houston on March 30th & 31st, 2012 at the South Texas College of Law.

The problem used this year was a commercial litigation claim created by the National Institute for Trial Advocacy. Faculty members presented demonstrations of the problem including direct and cross examination and opening and closing statements. Presentations were made from both the plaintiff and defense perspective. Attendees were able to practice their courtroom skills in morning and afternoon breakout sessions which followed each main session demonstration.

At lunch each day, attendees and faculty were treated to ethics presentations by the Honorable Patricia J. Kerrigan, 190th District Court, Harris County and the Honorable Mark Davidson, Multi District Litigation Judge, Harris County.

Michele and Chad successfully enlisted an outstanding faculty, each of whom was dedicated to the progress and improvement of the attendees. The collective wisdom, experience, and enthusiasm of these seasoned trial attorneys elicited rave reviews from the attendees and was central to the success of the 2012 TADC Trial Academy.

Faculty

Michele Yennie Smith, Mehaffy Weber, PC;

Beaumont

Chad Gerke, The Gerke Law Firm, PLLC.;

Brenham

Fields Alexander, Beck, Redden & Secrest,

L.L.P.; Houston

Christy Amuny, Bain & Barkley; Beaumont

K.B. Battaglini, McGinnis, Lochridge &

Kilgore, L.L.P.; Houston

Deborah J. Bullion, Gascoyne & Bullion;

Sugar Land

Ron T. Capehart, Galloway, Johnson,

Tompkins, Burr & Smith; Houston

Morris C. Carrington, Mehaffy Weber, PC;

Beaumont

Sandra French Clark, Mehaffy Weber, PC:

Beaumont

John Michael Cox, John M. Cox &

Associates: Dallas

Alistair Dawson, Beck, Redden & Secrest,

L.L.P.; Houston

John M. Dickey, Gordon Davis Johnson &

Shane P.C.; El Paso

Jane Haas, Hays, McConn, Rice &

Pickering, P.C.; Houston

Mitch Smith, Germer Gertz, L.L.P.;

Beaumont

Don Karotkin, Karotkin & Associates;

Houston

Murray Fogler, Beck, Redden & Secrest,

L.L.P.; Houston

Greg C. Wilkins, Orgain, Bell & Tucker,

L.L.P.; Beaumont

Larry Veselka, Smyser, Kaplan & Veselka,

L.L.P; Houston

Trey Sandoval, Mehaffy Weber, PC;

Houston

David V. Wilson II, Hays, McConn, Rice &

Pickering, P.C.; Houston

Graduates

Nathan Aduddell, Thompson & Knight LLP; Dallas

Julie Moeller Albright, Coats Rose Yale Ryman & Lee, PC; Houston

Lisa Alcantar, Porter, Rogers, Dahlman & Gordon, P.C.; San Antonio

Ashley E. Anderson, Adams and Reese LLP; Houston

Belinda May Arambula, Burns, Anderson, Jury & Brenner, L.L.P.; Austin

Mary W. Baker, Hinkle, Hensley, Shanor & Martin, L.L.P.; Midland

Sara Banks, Hays, McConn, Rice & Pickering, P.C.; Houston

J. Matt Breeland, Davis & Wilkerson, P.C.; Austin

Aaron J. Burke, Hartline Dacus Barger Dreyer LLP: Dallas

Alexis M. Butler, Galloway, Johnson,

Tompkins, Burr & Smith; Houston

Katy Covington, Mehaffy Weber, Houston; Houston

William B. Davis, Adams and Reese LLP; Houston

Christopher A. Grimm, Mehaffy Weber,

Houston; Houston

Heath Hendricks, Riney & Mayfield LLP; Amarillo

Keith Jefferson, Germer Gertz, L.L.P.; Beaumont

Jennifer Loftin, Royston, Rayzor, Vickery & Williams, L.L.P.; Corpus Christi

Adam Massey, Adams and Reese LLP; Houston

Frank Thomas Messina, Germer Gertz, L.L.P.: Beaumont

Benjamin C. Miller, Germer Gertz, L.L.P.; Houston

Emily Miller, Thompson & Knight; Houston **Alyssa E. Nava**, Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C; El Paso

Susan L. Price, Mills Shirley L.L.P.; Houston

Cory S. Reed, Thompson, Coe, Cousins & Irons, L.L.P.; Houston

Bryon A. Rice, Beck, Redden & Secrest, L.L.P.; Houston

Clark E. Smith, Beck, Redden & Secrest, L.L.P.; Houston

Kimberly R. Snagg, Thompson, Coe, Cousins & Irons, L.L.P.; Houston

Joy R. Tull, Hartline Dacus Barger Dreyer LLP; Dallas

Dannick Villaseñor-Hernandez, Plunkett & Gibson, Inc.; San Antonio

2013 TADC TRIAL ACADEMY

Volunteer to serve as faculty today!

April 26-27, 2013 Sheraton Dallas North/Galleria Dallas, Texas

Contact the TADC (tadc@tadc.org) to volunteer!



Trial Academy Co-Chair Chad Gerke, South Texas College of Law Dean Donald Guter and Academy Co Chair Michele Smith

TADC EXPERT WITNESS LIBRARY

THANK YOU FOR YOUR CONTRIBUTION TO THE EXPERT WITNESS DATABANK:

Jo Ben Whittenburg, Orgain, Bell & Tucker, LLP (Beaumont)

Ricardo R. Reyna, Brock Person Guerra Reyna, PC (San Antonio)

D. Bowen Berry, The Berry Firm, PLLC (Dallas)

George Charles Haratsis, McDonald Sanders, PC (Fort Worth

Stephen D. Howen, The Berry Firm, PLLC (Dallas)

Michael S. Hays, Hays, McConn, Rice & Pickering, PC (Houston)

J. Gordon McHaney, Chamberlain McHaney (Austin)

David C. McCue, McCue-Pauley & Associates, P.C. (Dallas)

Thomas C. Riney, Riney & Mayfield LLP (Amarillo)

and a Special Thank You to all the Members who completed and returned the Expert Witness Follow-up Forms

EXPERT WITNESS DATABASE

The Texas Association of Defense Counsel, Inc. maintains an Expert Witness Index which is open only to TADC members or member firms. This index includes thousands of experts by name and topic or areas of specialty ranging from Aabdomen@ to Azoology.@ Please visit the TADC website (www.tadc.org) or call the office at 512/476-5225 or FAX 512/476-5384 for additional information. To contribute material to the Expert Witness Library, mail to TADC Expert Witness Service, 400 West 15th St, Suite 420 Austin, TX 78701 or email tadcews@tadc.org.

There is a minimum charge of \$15.00, with the average billing being approximately \$25.00, depending upon research time. You can specify geographical locations, in or out of state. Note that out-of-state attorneys may only access the Expert Witness Index upon referral from a TADC member.

DEPOSITION & TRIAL TRANSCRIPT LIBRARY

The TADC office has added a Deposition/Trial Transcript Library to the Expert Witness service. TADC members using the Expert Witness Index may also obtain deposition and trial transcripts of experts when available. There is a nominal charge for this service. Depositions are available in both printed and computer disk form and can be sent overnight for an additional charge.

TAD

President

Publications

District 4

District 5

District 6

District

District 17

District 20

Thomas E. Ganucheau, Houston President-Elect Dan K. Worthington, McAllen Executive Vice President V. Elizabeth Ledbetter, Austin

Treasurer Milton C. Colia, El Paso

Secretary
Michele Y. Smith, Beaumont

Administrative Vice Presidents Programs

Publications
Don W. Kent, Tyler
Mike Hendryx, Houston
Membership & Administration
Clayton E. Devin, Dallas
Chantel Crews, El Paso
Vice Presidents
Douglas R. McSwane, Jr., Tyler
Sofia A Pamen McAllen

Douglas R. McSwane, Jr., Tyle Sofia A. Ramon, McAllen John W. Weber, San Antonio Mark C. Walker, El Paso Bradley K. Douglas, Austin K. B. Battaglini, Houston Gregory P. Blaies, Fort Worth Mark E. Stradley, Dallas District 1 Russell R. Smith Nacondoches

Russell R. Smith, Nacogdoches District 2 Greg C. Wilkins, Beaumont

Leonard R. Grossman, Lubbock

Rusty Beard, Abilene

Carl Green, El Paso District 8 Slater Elza, Amarillo

District 9
Robert Booth, Galveston

District 10
G. Robert Sonnier, Austin

District II
Nancy N. Morrison, Waco
District 12

George C. Haratsis, Fort Worth
District 13
Sid Lange, Fort Worth
District Rebesser

Pat Long Weaver, Midland

Gayla Corley, San Antonio

Kenneth Tekell, Jr., Houston

Millani J. Sharp, Houston

Directors at Large

Michael J. Shipman, Dallas

Ron T. Capehart, Houston

Tim Griesenbeck, Jr., San Antonio

William J. Sharp, Houston

District 18
Darin L. Brooks, Houston
District 19

Rebecca Kieschnick, Corpus Christi District 15 Joseph A. Rodriguez, Brownsville District 16

Randall G. Walters, Dallas

Gregory D. Binns, Dallas

Christy Amuny, Beaumont Jerry T. Fazio, Dallas Legislative Jackie Robinson, Dallas Pamela Madere, Austin

An Association of Personal Injury Defense, Civil Trial & Commercial Litigation Attorneys ~ Est. 1960

400 West 15th Street, Suite 420, Austin, Texas 78701 512/476-5225 Fax 512/476-5384 Website: www.tadc.org Email: tadc@tadc.org

June 15, 2012

Members of TADC TO:

FROM: Thomas E. Ganucheau, President

Keith B. O'Connell, Nominating Committee Chairman

Nominations of Officers & Directors for 2012-2013 RE:

OFFICES TO BE FILLED:

*Executive Vice President

*Four (4) Administrative Vice Presidents

*Eight (8) Regional Vice Presidents

*District Directors from odd numbered districts (#3, #5, #7, #9, #11, #13, #15, #17, #19)

*Directors At Large - Expired Terms

Nominating Committee Meeting - August 4, 2012

Please contact Keith O'Connell with the names of those TADC members who you would like to have considered for leadership through Board participation.

> Keith B. O'Connell O'Connell & Avery, L.L.P. 13750 San Pedro, Suite 110 San Antonio, Texas 78232 PH: 210/824-0009 FX: 210/824-9429

EMAIL: keitho@oconben.com

NOTE:

ARTICLE VIII, SECTION I - Four Vice Presidents shall be elected from the membership at large and shall be designated as Administrative Vice Presidents. One of these elected Administrative Vice Presidents shall be specifically designated as Legislative Vice President. A Fifth Administrative Vice President may be elected and specifically designated as an additional Legislative Vice President. One of these elected Administrative Vice Presidents shall be specifically designated as Programs Vice President. A Sixth Administrative Vice President may be elected and specifically designated as an additional Program Vice President. One of these elected Administrative Vice Presidents shall be specifically designated as Membership Vice President. A Seventh Administrative Vice President may be elected and specifically designated as an additional Membership Vice President. One of these elected Administrative Vice Presidents shall be specifically designated as Publications Vice President. An Eighth Administrative Vice President may be elected and specifically designated as an additional Publications Vice President. Eight Vice Presidents shall be elected from the following specifically designated areas

- 1.) Districts 14 & 15
- 2.) Districts 1 & 2

3.) District 17

4.) Districts 3, 7, 8 & 16

8.) Districts 4, 12 & 13

6.) Districts 9, 18, 19 & 20

- Tim Griesenbeck, Jr., San Antonio Doug Rees, Dallas Kenneth C. Riney, Dallas Jane Lea Haas, Houston Barry D. Peterson, Amarillo Michael Rodriguez, Brownsville Curry L. Cooksey, The Woodlands Jason Rother, Houston Immediate Past President Keith B. O'Connell, San Antonio DRI State Representative DRI State Representative
 Greg W. Curry, Dallas
 Young Lawyer Committee Chair
 Jas Brar, Houston
 TADC Executive Director
 Bobby L. Walden, Ausin
- 5.) Districts 10 & 11
- 7.) Districts 5 & 6

2012 TADC AWARDS NOMINATIONS

PRESIDENT'S AWARD

A special recognition by the President for meritorious service by a member whose leadership and continuing dedication during the year has resulted in raising standards and achieving goals representing the ideals and objectives of TADC.

Possibly two, but no more than three such special awards, to be called the President's Award, will be announced annually during the fall meeting by the outgoing President.

Recommendations for the President's Award can be made by any member and should be in writing to the President, who will review such recommendations and, with the advice and consent of the Executive Committee, determine the recipient. The type and kind of award to be presented will be determined by the President, with the advice and consent of the Executive Committee.

Following the award, the outgoing President will address a letter to the Managing Partner of the recipient's law firm, advising of the award, with the request that the letter be distributed to members of the firm.

Notice of the award will appear in the TADC Membership Newsletter, along with a short description of the recipient's contributions upon which the award was based.

Members of the Executive Committee are not eligible to receive this award.

FOUNDERS AWARD

The Founders Award will be a special award to a member whose work with and for the Association has earned favorable attention for the organization and effected positive changes and results in the work of the Association.

While it is unnecessary to make this an annual award, it should be mentioned that probably no more than one should be presented annually. The Founders Award would, in essence, be for service, leadership and dedication "above and beyond the call of duty."

Recommendations for such award may be made by any member and should be in writing to the President. The President and Executive Committee will make the decision annually if such an award should be made. The type and kind of award to be presented will be determined by the President, with the advice and consent of the Executive Committee. If made, the award would be presented by the outgoing President during the fall meeting of the Association.

Members of the Executive Committee are not eligible for this award.

In connection with the Founders Award, consideration should be given to such things as:

- ★ Length of time as a member and active participation in TADC activities;
- ★ Participation in TADC efforts and programs and also involvement with other local, state and national bar associations and/or law school CLE programs;
- ★ Active organizational work with TADC and participation in and with local and state bar committees and civic organizations.

NOMINATIONS FOR BOTH AWARDS SHOULD BE SENT TO:

Thomas E. Ganucheau Beck, Redden & Secrest, L.L.P.

1221 McKinney, Suite 4500 PH: 713/951-3700 Houston, TX 77010 FX: 713/951-3720

Email: tganucheau@brsfirm.com

TADC 2012 SUMMER SEMINAR July 18-22, 2012 ~ Sandestin Golf & Beach Resort ~ Sandestin, Florida

Gregory D. Binns, Thompson & Knight, L.L.P., Dallas & Darin L. Brooks, Beirne, Maynard & Parsons, L.L.P., Houston, Program Co-Chairs

CLE Approved for: 9.5 hours, including 2.0 hours ethics

Wednesday, July 18, 2012		7:30 – 8:15am	STRANGE BEDFELLOWS: HOW THE U.S.	
6pm – 8pm	TADC Welcome Reception		CONGRESS AND THE TEXAS SUPREME COURT HAVE CHANGED REMOVAL TO	
Thursday, July	19, 2012		FEDERAL COURTS IN TEXAS, AND OTHER PITFALLS TO AVOID REMAND	
6:45-9:00am	Buffet Breakfast		Alex Roberts Beck, Redden & Secrest, L.L.P., Houston	
7:15-7:30am	Welcome & Announcements Thomas E. Ganucheau, TADC President Beck, Redden & Secrest, L.L.P., Houston Gregory D. Binns, Program Co-Chair Thompson & Knight, L.L.P., Dallas Darin L. Brooks, Program Co-Chair Beirne, Maynard & Parsons, L.L.P., Houston	8:15 – 8:45am 8:45– 9:30am	TROUBLE ACROSS THE POND: PREPARING FOR CROSS-BORDER LITIGATION OF DISCRIMINATION CLAIMS Daniel Schuch Cozen O'Connor, P.C., Houston SWITCHING SIDES: A PLAINTIFF LAWYER'S	
7:30-8:05am	FEDERAL SUPERSEDEAS LAW: HOLLYWOOD AND DANIEL WEBSTER EXPLAIN IT ALL FOR YOU Terry Adams & Jeff Nobles Beirne, Maynard & Parsons, L.L.P., Houston	8.43— 9.30aiii	GUIDE TO BEING A BETTER DEFENSE LAWYER AND ETHICAL ISSUES THAT AFFECT BOTH BARS (.75 hrs ethics) Russell B. Serafin The Gallagher Law Firm, L.L.P., Houston	
8:05-8:45am	WHAT'S HAPPENING IN THE HIGH COURT: TEXAS SUPREME COURT UPDATE (.25 hrs ethics)	9:30 – 10:30am	WHAT YOUR YOUNG LAWYERS ARE THINKING, BUT NOT SAYING – A PANEL DISCUSSION	
	Katherine Binns Sedgwick LLP, Dallas		Jas Brar - Moderator Beck, Redden & Secrest, L.L.P., Houston Casey Marcin	
8:45 – 9:20am	ADDITIONAL INSURED COVERAGE: WEAVING THROUGH INDEMNITY CLAUSES AND ADDITIONAL INSURED AGREEMENTS Stephen Edmundson Cozen O'Connor, P.C., Houston		Orgain, Bell & Tucker, L.L.P., The Woodlands Nathan Aduddell Thompson & Knight, L.L.P., Dallas Ashley Pate Potter Minton, A Professional Corporation, Tyler	
9:20-9:50am	EFFECTIVE USE OF EXPERTS	10:30-10:45am	BREAK	
	Darold Bittick, P.E. SEA Limited, Houston	10:45-11:30am	THE ETHICAL TRIAL LAWYER (.75 hrs ethics) Richard B. Collins, FDLA Past President	
9:50-10:25am LEASE PRESERVATION AND LEASE RE-NEGOTIATION: TIPS AND TACTICS FOR BUSTING OR PRESERVING YOUR MINERAL LEASE Ron Capehart Galloway, Johnson, Tompkins, Burr & Smith, Houston		11:30-12:15pm	Kubicki Draper, Tallahassee, Florida NEW TECHNOLOGIES IN ELECTRONIC DISCOVERY AND THEIR PRACTICAL APPLICATION David Pluchinsky Beirne, Maynard & Parsons, L.L.P., Houston Eric Seggebruch	
10:25-10:40am	BREAK		Recommind, New York	
10:40-11:25am	WHAT A WASTE OF TIME: EFFECTIVE PRESENTATION TECHNIQUES FOR BENCH TRIALS (.25 hrs ethics)	Aft Saturday, July	ernoon Free to Enjoy Sandestin! 21, 2012	
	Judge R.K. Sandill 127th Judicial District, Houston	6:45-9:00am	Buffet Breakfast	
11:25 -12:10	CONFESSIONS OF A CHEAPSKATE:		Day Free to Enjoy Sandestin!	

Sunday, July 22, 2012

Depart for Texas!

Thanks to TADC's Core Sponsor



Summer Seminar Sponsor



Afternoon Free to Enjoy Sandestin!

CHEAP AND EASY TRIAL DEMONSTRATIVES

Beck, Redden & Secrest, L.L.P., Houston

Friday, July 20, 2012

6:45-9:00am Buffet Breakfast

7:15-7:30am Welcome & Announcements

AND VISUALS
Eric J.R. Nichols

2012 TADC Summer Seminar July 18-22, 2012

Sandestin Golf & Beach Resort ~Sandestin, FL ~ 9300 Emerald Coast Pkwy. West – Miramar Beach, FL 32550

Pricing & Registration Options

Registration fees include Wednesday evening through Saturday group activities, including the Wednesday evening welcome reception, all breakfasts, CLE Program each day and related expenses and hospitality room. If you would like CLE credit for a state other than Texas, contact the TADC office for the appropriate fees.

Registration for Member Only (one person) \$650.00 Registration for Member & Spouse/Guest (2 people) \$825.00

Children's Registration

Registration fee for children includes Wednesday evening welcome reception, Thursday, Friday & Saturday breakfast

Payment-Check#

Children Age 12 and Older \$150.00 \$100.00 Children Age 6-11

Spouse/Guest CLE Credit

If your spouse/guest is also an attorney and would like to attend the Summer Seminar for CLE credit, there is an additional charge to cover written materials, meeting materials, and coffee breaks.

Spouse/Guest CLE credit for Summer Seminar \$75.00

Hotel Reservation Information

For hotel reservations, CONTACT THE SANDESTIN GOLF AND BEACH RESORT DIRECTLY AT 800/320-8115 and reference the TADC Summer Seminar. The TADC has secured a block of rooms at an EXTREMELY reasonable rate. It is IMPORTANT that you make your reservations as soon as possible as the room block will fill quickly. Any room requests after the deadline date, or after the room block is filled, will be on a wait list basis.

DEADLINE FOR HOTEL RESERVATIONS IS JUNE 18, 2012

TADC Refund Policy Information

Date Received

Registration Fees will be refunded ONLY if a written cancellation notice is received at least TEN (10) BUSINESS DAYS PRIOR (JULY 3, 2012) to the meeting date. A \$75.00 ADMINISTRATIVE FEE will be deducted from any refund. Any cancellation made after JULY 3, 2012 IS NON-REFUNDABLE.

	2012 TADC SU	MMER SEM	INAR REGISTRA	ATION FORM	
		July 1	8-22, 2012		
I	For Hotel Reservations, co	ntact the Sandestin	Golf & Beach Resort DIR	RECTLY AT 800/320-81	115
CHECK ALL APPL	ICABLE BOXES TO CA	LCULATE YOUR	REGISTRATION FEE:		
□ \$ 650.00 Men	mber ONLY (One Person	1)	\$150.00	Children 12 & Old	er
	mber & Spouse/Guest (2)	people)	\$100.00	Children 6-11	
	use/Guest CLE Credit				
□ \$ 75.00 CL	E for a State OTHER tha	n Texas - State(s) _			
TOTAL Registration	Fee Enclosed \$				
NAME:			FOR NAME TAG:		
FIRM:			OFFICE PHONE:		
ADDRESS:			CITY:	ZIP:_	
SPOUSE/GUEST (II	FATTENDING) FOR NA	ME TAG:			
	your spouse/guest is a TAI				
EMAIL ADDRESS:					
			all registrants, it is suggested line set by the hotel for		
PAYMENT METHOD:					
A CHECK in the amount	of \$ is enclosed with	this form.			
MAKE PAYABLE & MAII	L THIS FORM TO: TADC, 400	West 15th Street, Suite 42	0, Austin, Texas 78701		TADC 400 W. 15th Street
CHARGE TO: (circle one)	Visa	Mastercard	American Express		Suite 420
					Austin, TX 78701 PH: 512/476-5225
Card Number			Expira	ation Date	FX: 512/476-5384
Signature:			(as it appears on o	card)	
(For TADC Office U	Jse Only)				

ID#

Expert Witness Research Service Overall Process

- Complete the TADC Expert Witness Research Service Request Form. Multiple name/specialty requests can be put on one form.
- If the request is for a given named expert, please include as much information as possible (there are 15 James Jones in the database).
- If the request is for a defense expert within a given speciality, please include as much information as possible. For example, accident reconstruction can include experts with a speciality of seat belts, brakes, highway design, guardrail damage, vehicle dynamics, physics, human factors, warning signs, etc. If a given geographical region is preferred, please note it on the form.
- Send the form via facsimile to 512/476-5384 or email to <u>tadcews@tadc.org</u>
- Queries will be run against the Expert Witness Research Database. All available information will be sent via return facsimile transmission. The TADC Contact information includes the attorney who consulted/confronted the witness, the attorney's firm, address, phone, date of contact, reference or file number, case and comments. To further assist in satisfying this request, an Internet search will also be performed (unless specifically requested NOT to be done). Any CV's depositions, and/or trial transcripts that reside in the Expert Witness Research Service Library will be noted.
- Approximately three months after the request, an Expert Witness Research Service Follow-up Form will be sent. Please complete it so that we can keep the Expert Witness Database up-to-date, and better serve all members.

Expert Witness Service Fee Schedule

Single Name Request

Expert Not Found In Database	\$15.00
**Expert Found In Database, Information Returned To Requestor	\$25.00
A RUSH Request Add An Additional	\$ 10.00
A \$50.00 surcharge will be added to all non-member requests	\$50.00

** Multiple names on a single request form and/or request for experts with a given specialty (i.e., MD specializing in Fybromyalgia) are billed at \$80.00 per hour.

Generally, four to five names can be researched, extracted, formatted, and transmitted in an hour.

The amount of time to perform a specialty search depends upon the difficulty of the requested specialty, but usually requires an hour to extract, format, and transmit. If the information returned exceeds four pages, there is a facsimile transmission fee.

The TADC Expert Witness Service Deposition Library can provide copies of depositions. The TADC Expert Witness Library can provide copies of depositions, CVs, trial transcripts, etc. The fee for locating and copying or printing material is \$40.00 for an electronic (diskette) copy; hard-copy is \$40.00, plus a \$0.05 per page

ASSOCIATE

TEXAS ASSOCIATION OF DEFENSE COUNSEL, INC.

400 West 15th Street, Suite 420 * Austin, Texas 78701 * 512/476-5225

Expert Witness Search Request Form

Please FAX this completed form to: 512/476-5384

Date:	NORMAL	RUSH (Surcharge applie
Attorney:	TADC I	Member Non-Membe (Surcharge applie
Requestor Name (if different from Attorney):		
Firm:	City:	
Phone:	FAX:	
Client Matter Number (for billing):		
Case Name:		
Cause #:	Court:	
Case Description:		
Search by NAME(S): (Attach additional she	note if required \	
Designated as: Plaintiff Defense Unknow		
·		
Name:		
Company:		
Address: Ctata		
City: State:		
Areas of expertise:		
<u> </u>		
SPECIALTY Search: (Provide a list of experts of experts, qualifications, and geographs anny key words as possible; for example, 'oil/gas right engineering, offshore drilling, OSHA, etc. A detailed	ical area, if required (i.e., DFW me expert' could include economics (etro, South TX, etc). Give as (present value), construction,
		_

A research fee will be charged. For a fee schedule, please call 512 / 476-5225 or visit the TADC website www.tadc.org **Texas Association of Defense Counsel, Inc.**Facsimile: 512 / 476-5384

SUBSTANTIVE LAW NEWSLETTERS

INCLUDED ON THIS CD ARE THE FOLLOWING NEWSLETTERS:

• Commercial Litigation

Editor: Martha J. Stone, Orgain, Bell & Tucker, L.L.P., Beaumont

Defamation

Editor: Michael D. Morrison, Baylor Law School, Waco

Employment Law

Editor: Ř. Edward Perkins, Sheehy Ware & Pappas, P.C., Houston Assistant Editor: Shawn Grady, Sheehy Ware & Pappas, P.C., Houston

Energy Law

Co-Editors: Greg W. Curry, Gregory D. Binns & Nathan H. Aduddell, Thompson & Knight, L.L.P., Dallas

Evidence

Editor: Darin L. Brooks, Beirne, Maynard & Parsons, L.L.P., Houston
Contributors: Jarad Kent, Chamblee, Ryan, Kershaw & Anderson, Dallas, Nicholas A. Morrow, Fulbright & Jaworski, L.L.P., Houston, Stacey K. Van Camp, Strong, Pipkin, Bissell & Ledyard, Houston

Health Care Law

Editor: Casey P. Marcin, Orgain, Bell & Tucker, L.L.P., The Woodlands

Insurance

Co-Editors: David A. Clark, Robert L. Horn, Brian T. Bagley, Benjamin T. Zinnecker, Kurt L. Harkness & Scott R. Davis, Beirne, Maynard & Parsons, L.L.P., Houston

Product Liability

Editors: Joseph S. Pevsner, Thompson & Knight, L.L.P., Dallas Contributing Editor: Mackenzie S. Wallace, Thompson & Knight, L.L.P., Dallas

Professional Liability

Co-Editors: Melinda R. Burke and Nathan A. Winkler, Shannon, Gracey, Ratliff & Miller, L.L.P., Fort Worth

Toxic Tort

Editor: C. Victor Haley, Fairchild, Price, Haley & Smith, L.L.P., Nacogdoches Contributor: J. Keith Stanley, Fairchild, Price, Haley & Smith, L.L.P., Nacogdoches



Exponent[®]

When you need to know . . .

Our team of scientists, engineers, medical professionals and business consultants provide expertise in more than 70 different disciplines to support technically challenging litigation cases. What's more, over the past 35 years, Exponent has been involved in more than 30,000 cases. We have provided science-based investigations for litigation involving product liability, environmental/toxic tort issues, construction disputes, intellectual property, personal injury and more . . .

- Accident Reconstruction
- Biomechanics & Injury Assessment
- Civil & Structural Engineering
- Construction Delay
- Data Analysis
- Electrical/Electronics
- Environmental/Toxic Tort
- Ergonomics

- Fires & Explosions
- Food Science and Chemicals
- Health
- Materials Evaluation
- Mechanical Design Assessment
- Occupational Injuries
- VisualCommunications/Demonstrative Evidence
- Warnings & Labeling/Human Factors

18 US and 3 International offices including Houston

281.983.4000 • houston-office@exponent.com • www.exponent.com

10899 Kinghurst Drive, Suite 245 • Houston • TX • 77099





400 W. 15th Street Suite 420 Austin, Texas 78701 Presorted Standard US Postage PAID Craftsman Printers, Inc.



September 26-30, 2012 2012 Annual Meeting Westin St. Francis – San Francisco, California



April 3-5, 2013

TADC Spring Meeting and Legislative Day

Doubletree Suites – Austin, Texas



February 2-6, 2013
TADC Winter Seminar
Sheraton Steamboat –Steamboat Springs, Colorado