TADC

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

SUMMER 2013

IN THIS ISSUE:

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TADC CALENDAR OF EVENTS

August 2-3, 2013	**TADC Budget/Nominating Committee** Austin, Texas
August 9-10, 2013	**West Texas Seminar** Inn of the Mountain Gods – Ruidoso, NM
September 18-22, 2013	**TADC Annual Meeting** W Hotel – Boston, Massachusetts Mitch Smith & John Weber, Co-Chairs
November 8-9, 2013	**TADC Board of Directors Meeting** San Antonio, Texas
January 24-25, 2014	**TADC Board of Directors Meeting** Austin, Texas
February 5-9, 2014	**TADC Winter Seminar** Elevation Resort & Spa – Crested Butte, Colorado
April 9-13, 2014	**TADC Spring Meeting** The Fairfax Embassy Row – Washington, D.C.
July 16-20, 2014	**TADC Summer Seminar** Coeur d'Alene Resort – Coeur d'Alene, Idaho
September 24-28, 2014	**TADC Annual Meeting** Hyatt Hill Country Resort – San Antonio, Texas

PRESIDENT'S MESSAGE

"YOUR INVESTMENT IS WORTHWHILE"

By: Dan K. Worthington
Atlas, Hall & Rodriguez, LLP - McAllen

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." Your investment in the TADC through your time, effort and dues are what enable us to support this constitutional promise contained in the 7th Amendment.

In sitting down to draft the mid-year report, it seemed appropriate to me to convey what we've done and what we are doing in the context of your investment and our 7th Amendment right to trial by jury.

The New Rules.

Beginning in June 2011, the TADC joined with others interested in an implementation of the HB 274 mandate, consistent with the legislative guidance and protection (and enhancement) of the 7th Amendment. We spent long hours studying the extensive work conducted in other States on this issue and focused on how the rules could be better crafted in a manner which took into account the specific needs of Texas. We provided the results of this work to the Supreme Court, the Court's Advisory Committee and the Court's task force for their respective consideration.

In the late fall of 2012, when the Court finally issued its proposed compulsory rules for comment, we studied the proposal and in response, submitted a detailed and thorough review. We travelled the state from Beaumont to Amarillo and met with at least a dozen local Bar Associations and many other groups to discuss the issue and soundboard our thoughts on the Court's proposal and provided the results of these efforts to the Court as well. Regretfully, the Court did not revisit the compulsory nature of the rule it drafted. Nevertheless, we were successful in having some parts of the rule changed so that the adverse impact of the limitations it imposed on a litigant's access to due process was lessened.

Subsequently, we once again took our "show on the road" and travelled throughout the State in an effort to educate our members on the strategic use of the new rules and those areas which we believe presented risks to practitioners. As part of our ongoing efforts, we are continuing to review the rules and help provide our membership with additional information to be considered and tools to be used in ensuring all of our clients receive fair treatment within the civil justice system.

The Legislative Session.

Thankfully, the 83rd Legislative Session will end without any successful efforts at limiting the fair and appropriate access to a jury trial. Though not particularly exciting, we spent a lot of time reviewing "nuts and bolts" proposals which will ultimately impact many of our day to day practices. The most obvious example of this is SB 679. In this bill, Sen. Duncan addressed the conflict between "paid or incurred" and the application of section 18.001/.002 in the medical billing records context. We helped to ensure that the revised rules would accomplish the intent of harmonizing the two conflicting statutes, without jeopardizing the *Haygood* opinion. We were active participants in the final formulation

of HB 1869 which restored the ability of a recovering claimant to share the burden of an inadequate recovery with a contractual lien subrogor. We served on a working group to assist in the development of a compromise to HB 1325 which was targeted toward addressing the problems originating from the inactive asbestos docket. The final bill, which passed and awaits signature by the Governor, provides a mechanism for a defendant to get perpetual liability claims off its books while also affording a plaintiff with a meritorious claim to get back into Court and have his or her claim fairly litigated. What we were able to do this session, I am proud to say, was to continue the good work of all those TADC Boards in years past in protecting the 7th Amendment and bringing a defense perspective to legislative considerations.

We could not have been successful this session without the hard (and often thankless) work of many members of the Board of Directors as well as numerous other members. Of particular note, I want to thank Pam Madere and Clayton Devin who were always willing and able to handle any task assigned to them. In addition, David Chamberlain, Michele Smith and Mike Hendryx were always willing and able to help. Mike was instrumental in bringing our voice to HB 1325.

Notwithstanding the current TADC board's work this session, our continuing success rests largely on the shoulders of David Chamberlain's, Keith O'Connell's and Jay Old's service, just to name a few. Their credibility and reputation for candor made it easier for us to be invited participants and sounding boards. Finally, the continuity brought to the table by Bobby Walden and George Scott Christian cannot be over-appreciated.

The Trial Academy.

The 31st Annual TADC Trial Academy was held in Dallas on the last weekend in April. Academy Chairs Clayton Devin with Macdonald Devin, P.C. in Dallas and Mike Shipman with Fletcher, Farley, Shipman & Salinas, LLP in Dallas put together an outstanding program. The young lawyers who attended the course were provided a two-day program that was loaded with outstanding judges and volunteers, including Judge Carlos Cortez, Judge Tonya Parker, Judge Martin Hoffman, Andy Payne, Doug Fletcher, Lewis Sifford, Andy Sommerman and Jim Cowles. That we were blessed with such outstanding "plaintiff's attorneys", judges and members like Jim Cowles, Lewis Sifford and Doug Fletcher made it a special event.

The importance of the Trial Academy goes beyond the opportunity to teach our young lawyers trial advocacy skills. It provides us with the opportunity to impress upon each new class the importance of the 7th Amendment and our fight to preserve access to a civil jury trial. This year, the program was an outstanding success and I believe we helped contribute to another class of outstanding young trial attorneys.

The Winter Meeting.

Our first meeting of 2013 was held in Steamboat Springs, Colorado in early February. Program Chairs Greg Curry and Randy Walters delivered an outstanding program. In addition to the top-flight Texas speakers, they put together a program which included participants from the Illinois Association of Defense Trial Counsel. In addition to the substantive topics, an emphasis on the right to trial by jury was woven throughout the program as well.

Other than a dislocated little finger as a result of an unfortunate snow tubing incident, the skiing was great and as always, the hospitality suite was extremely hospitable.

The Spring/Legislative Meeting.

The TADC Spring Meeting and Legislative Day were held in early April. As always, dozens of members took time to walk

the halls of the Capitol, distributing literature and visiting with legislators with regard to TADC's positions on the issues. This is an extremely important function and paves the way for your leadership when testifying before House and Senate Committees.

The bi-annual TADC Young Lawyers Committee-sponsored breakfast honoring the Texas Supreme Court commenced Thursday's activities, and drew most of the sitting Court as well as several former Court members. Program Chairs Ross Pringle, Robert Sonnier, and TADC Young Lawyers' Chair Charlie Downing did a tremendous job in planning and hosting what proved to be, as always, a successful event.

The Summer Meeting.

Looking ahead, the TADC Summer Seminar is just around the corner in Whistler, British Columbia on July 17th-21st. Like our Winter meeting, we invited a sister defense bar and will be joined for one of the two days by the Washington Defense Trial Lawyers Association.

Beyond the outstanding continuing education program are the opportunities for networking with the Washington defense bar. As an aside, there cannot be a more outstanding location for this meeting. Whistler offers something for everyone to enjoy and provides the perfect place for a family vacation. However, if you have not yet registered, rooms are in short supply and the TADC rate is unbeatable.

The Annual Meeting.

Our year ends with the 2013 Annual Meeting in Boston from September 18th – September 22nd. A top rate program has been set and Boston (and the Sox) offers a wide selection of social activities for attendees, guests and families. Program Chairs John Weber and Mitch Smith have arranged for meaningful CLE and have lined up speakers from the TADC, the DRI, the National Center for State Courts as well as practitioners from Massachusetts.

Like years past, this Annual Meeting will not only give us the chance for meaningful continuing education, but will afford us the opportunity for fellowship and networking as well.

Linkedin, Twitter, Website, et al.

We continue to improve our web-based presence by focusing on our social media involvement and our website. These efforts complement our traditional methods of communicating with one another and we believe will enhance our ability to improve each of our practices through education and networking as well as our support of the civil jury trial through a better coordinated defense.

This year has seen us continue the betterment of our communication with our members, while reinforcing our ability to complete our mission of bringing the defense perspective to the promotion of the 7th Amendment. Your investment in us and our investment in you is worthwhile and together we are making a difference.

T A D C

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

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June 15, 2013

TO: Members of TADC

FROM: Dan K. Worthington, President
Thomas E. Ganucheau, Nominating Committee Chair

RE: Nominations of Officers & Directors for 2013-2014
Nominating Committee Meeting - August 3, 2013

OFFICES TO BE FILLED:
*Executive Vice President
*Four (4) Administrative Vice Presidents
*Eight (8) Regional Vice Presidents
*District Directors from even numbered districts
(#2, #4, #6, #8 ,#10, #12, #14, #16, #18, #20)
*Directors At Large - Expired Terms

Please contact Tom Ganucheau with the names of those TADC members who you would like to have considered for leadership through Board participation.

Thomas E. Ganucheau
Beck Redden LLP
1221 McKinney, Ste. 4500
Houston, Texas 77010
PH: 713/951-3700 FX: 713/951-3720
Email: tganucheau@beckredden.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
5.) Districts 10 & 11
6.) Districts 9, 18, 19 & 20
7.) Districts 5 & 6
8.) Districts 4, 12 & 13

2013 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:

Dan K. Worthington
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McAllen, TX 78502 FX: 956/686-6109
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2013 Spring Meeting

Doubletree Suites – April 3-5, 2013 – Austin, Texas

The TADC held its 2013 Spring Meeting in Austin, Texas April 3-5, 2013. The Spring Meeting coincides with the Texas Legislative Session and activities for meeting registrants were centered around this event. Opening day events began with TADC's Legislative Day. Members walked the halls of the Capitol, meeting with their local elected officials and sharing with them the Association's viewpoint and philosophy. Wednesday evening's opening reception honoring the Texas Legislature was a great success.

As has become a tradition, the TADC Young Lawyers Committee hosted the opening breakfast in honor of the Texas Supreme Court. All current and former members of the Court were invited. Seven of the nine sitting Justices were in attendance as well as several former justices.

G. Robert Sonnier, with the Austin law firm of Germer, Gertz, Beaman & Brown and **Ross Pringle** with the Austin law firm of Wright & Greenhill, P.C. did a masterful job as Program Co-Chairs of the meeting. The program included representatives of the judiciary from all levels including **Supreme Court Justice Jeff Boyd**, **Federal District Judge Lee Yeakel and District Court Judge Orlinda Naranjo.** Topics ranged from Social Networking and the Law to Expedited Jury Trials and Trial Tactics..

M.C. Carrington, Hayes Fuller, Ross Pringle & Pat Weaver

Mike Shipman, Heidi Coughlin & Mackenzie Wallace

2013 Spring Meeting

TADC President Dan Worthington, TTLA President Brad Parker and Past TADC Presidents Greg Curry & David Chamberlain

Milton Colia, Sofia Ramon with eith & KaRynn O'Connell

Elliott Taliaferro, Gayla Corley, Jason McLaurin & Mike Hendryx

Monika Cooper, Michele Smith, Russell Smith & Ken Tekell

Mitch Moss, Victor & Ileana Vicinaiz, Charlie Downing with Monica & Greg Wilkins

2013 Spring Meeting

John Stavinoha, Mark Stradley & Tom Ganucheau

Denice & Bryan Pope with Doug Rees

Pat Weaver, Justice Jeff Boyd & TADC Executive Director Bobby Walden

Justice Harriet O'Neill, Justice Paul Green & Christy Amuny

Expedited Civil Actions in Texas

By Professor Michael D. Morrison
Baylor University School of Law; Waco

The Expedited Civil Action[1]

Effective March 1, 2013, Texas inaugurated a new civil action. The supreme court promulgated a new set of rules for expedited actions making mandatory a shortened, summary, and expedited (SSE) process for most purely monetary claims where the total recovery sought, excluding only post judgment interest, does not exceed $100,000. The new rules govern and alter the trial process from pleading, through discovery, trial setting, presentation of witnesses and evidence, and the maximum judgment that may be entered following a verdict.

This article will focus on the substance of the newly adopted expedited actions process in an attempt to provide some initial guidance to those dealing with it during its growing pains phase. Observations concerning the value or fairness of its enactment as a mandatory process, which a plaintiff often may initiate or avoid through artful pleading but which a defendant can escape only through a showing of good cause, are left to another venue.

Background

Texas is not the first jurisdiction to adopt a process providing for shortened, summary, or expedited civil trials. In a recent report,[2] the National Center for State Courts (NCSC) published a study of six jurisdictions, which have implemented alternative processes intended to encourage (or, in a minority of cases, force) litigants to pursue shortened and expedited trials. The goal has been to create tracks that provide streamlined and less expensive pretrial and trial procedures.

The evidence is that these programs, at least during the time studied, have not been overwhelming successes in every jurisdiction where they have been tried. Nevada saw only two voluntary uses of the process. In Arizona, all but two of the SSE trials involved "fender benders." Further, in Arizona, with the retirement of the sole judge who championed it, the program lost "its institutional stature and became 'just another' optional ADR track." In Oregon, only eight cases (rather than the fifty that were anticipated) were tried under the expedited process in the first eighteen months of the program.

The NCSC study sought to identify the types of disputes best suited to an expedited process. It concluded that the process works best for disputes that seek lower-value damage awards and are factually and legally straightforward. The benefit of a low *ad damnum* is self-evident. Simple facts impact discovery as well as the need for live expert testimony to explain nuances of the evidence. According to the NCSC report, these characteristics, taken together, may make possible "an earlier trial date, a truncated pretrial process, simplified trial procedures, or some combination thereof."

An additional characteristic of all but one of the processes studied is that access is voluntary. The one exception is Nevada's requirement that a party requesting a trial de novo following mandatory arbitration must use its short trial program.

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[1] This article is the product of the joint contributions of TADC members Dan Worthington, Milton Colia, Mitch Smith, Ken Tekell, and Mike Morrison.

[2] National Center for State Courts, Short, Summary & Expedited: The Evolution of Civil Jury Trials (2012), available at http://www.ncsc.org/SJT/.

Notwithstanding the mixed results of the early adopters, more jurisdictions are likely to continue to look for ways to reduce the cost of and investment of time in civil trial actions. The recent focus on short, summary, and expedited trials is likely to continue.

Texas' Expedited Actions Rules

The Texas Supreme Court adopted rule changes to address House Bill 274 (HB 274) passed in the 2011 legislative session in order to promote the prompt, efficient, and cost-effective resolution of certain civil actions. HB 274 mandated that the supreme court promulgate and adopt rules to lower the cost of discovery and to expedite certain trials through the civil justice system. Specifically, it required the supreme court to adopt rules governing permissive appeals, offers of judgment, dismissals, and expedited civil actions. The rules governing permissive appeals and dismissals were completed in 2012, while the remaining two subject areas were addressed by the supreme court's order of February 12, 2013. Misc. Docket No. 13-9022

HB 274 specified that these rules would apply to "civil actions in district courts, county courts at law, and statutory probate courts where the total amount in controversy, inclusive of damages, penalties, attorney's fees, expenses, costs, interest, or any other type of damage of any kind, does not exceed $100,000."

The supreme court, responding to the legislative mandate, enacted an expedited actions process. This process is set out in Texas Rules of Civil Procedure (TRCP) 169 (creates the process), amendments to TRCP 47 (requires pleading into or out of the process), TRCP 78(a) (revises the civil case information sheet), and TRCP 190 (limits discovery). These rule changes only apply to cases filed on or after March 1, 2013. Texas Rule of Evidence 902(10)(c) (self-authentication) was also amended and these changes apply to all pending cases, whenever filed.

The expedited actions process that is mandatory[3] for any suit where all claimants, other than counter-claimants, affirmatively plead for only monetary relief aggregating $100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees. Only post judgment interest is excluded. TRCP 169(b).

A claimant who prosecutes a suit under the rule cannot recover a judgment in excess of $100,000, period. Even were a claimant to receive a jury verdict in excess of $100,000, the judgment may not pierce the $100,000 ceiling.[4]

The limitations on recovery do not apply to a counter-claimant. TRCP 169(a)(1). Therefore, while claimants desiring to try the suit under the expedited action rules may not seek non-monetary relief or damages exceeding $100,000 there is no restriction against a counter-claimant from doing so. However, a counter-claim for non-monetary relief or an amount in excess of $100,000 does not remove the case from the expedited action rules absent a showing of good cause. Consequently, a defendant with a counterclaim of significant monetary or nonmonetary value (for example, defamation in a professional malpractice or investor fraud suit) may be forced to try the case without the benefits of full discovery and a plenary trial on the merits.

Pleading Into or out of the Expedited Action: TRCP 47, Claims for Relief

Until the recent amendments, TRCP 47 required claimants, cross claimants, counter claimants, and third-party claimants to plead (1)

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[3] Except in a suit governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code, a suit in which the original petition contains the statement in paragraph (c)(1) is governed by the expedited actions process. Comment to TRCP 47.

[4] The rule in *Greenhalgh v. Service Lloyds Ins. Co.*, 787 S.W.2d 938 (Tex. 1990), expressly does not apply. *Greenhalgh* held that absent a showing of surprise or prejudice by an opposing party, a trial court must grant leave to a party to amend his or her pleadings to conform the amount of damages requested to that awarded by the jury. Comment 4, TRCP 169(b)

a short statement of the claim to give sufficient and fair notice; (2) that the damages sought were within the jurisdiction of the court, if the claim was for unliquidated damages only; and (3) a demand for other relief sought. Parties desiring more specific information obtained it through a special exception.

The amended TRCP 47[5] continues the first and third requirements of the prior version but now requires parties also to plead into or out of the newly enacted expedited actions process governed by TRCP 169. As amended, it makes two changes to the prior practice. First, all claims, not just those for unliquidated damages, must state that the damages sought are within the jurisdictional limits of the court. Second, except in suits governed by the Family Code, the amount of monetary relief sought must be identified as falling within one of four dollar-amount tiers, (1) for monetary relief of: $100,000 or less, (2) over $100,000 but not more than $500,000, (3) over $500,000 but not more than $1,000,000, and (4) over $1,000,000.

Additionally, claims for $100,000 or less must be divided between (1) claims that seek only monetary relief including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees (bringing them within the expedited actions process), and (2) those that seek non-monetary relief as well (disqualifying them from the expedited actions process). While the process is always mandatory for the defendant, many plaintiffs will experience it as voluntary by adjusting the damages claim up or down or including or excluding a claim for nonmonetary relief.

Finally, as amended, TRCP 47 provides that if the original pleading does not state the amount and types of damages being sought, the plaintiff must amend if the defendant seeks this information via special exception. Importantly, no discovery may take place until the pleading has been amended.[6] Unless the trial judge chooses sua sponte to bar discovery until a conforming pleading is filed, it is left to the defendant to seek enforcement of this limitation.

A defendant who desires that the plaintiff plead into or out of the expedited process should file a special exception, the format of which will be similar to that used to confirm that a dispute meets the minimal jurisdictional limits of the court. For example:

> Defendant specially excepts to the (original petition, counterclaim, cross-claim, or third party claim) in that this pleading fails to comply with TRCP 47 which requires that the party identify the amount and type of damages being sought. This party requests that _____ comply with TRCP 47(c) and amend this pleading to identify the amount and types of damages being sought. Defendant requests that this special exception be set for hearing and that said special exception be granted, and further requests that _____ not conduct any discovery until _____ pleading is amended to comply.

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[5] An original pleading which sets forth a claim for relief, whether an original petition, counterclaim, cross-claim, or third party claim, shall contain

(a) a short statement of the cause of action sufficient to give fair notice of the claim involved;

(b) a statement that the damages sought are within the jurisdictional limits of the court;

(c) except in suits governed by the Family Code, a statement that the party seeks:

(1) only monetary relief of $100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees; or

(2) monetary relief of $100,000 or less and non-monetary relief; or

(3) monetary relief over $100,000 but not more than $200,000; or

(4) monetary relief over $200,000 but not more than $1,000,000; or

(5) monetary relief over $1,000,000; and

(d) a demand for judgment for all the other relief to which the party deems himself entitled.

[6] Relief in the alternative or of several different types may be demanded; provided, further, that upon special exception the court shall require the pleader to amend so as to specify the maximum amount claimed. A party that fails to comply with (c) may not conduct discovery until the party's pleading is amended to comply.

A defendant who receives a discovery request from a noncomplying claimant should not ignore the request and risk waiving available objections nor should he ignore TRCP 47 by replying substantively. Rather, the defendant should respond with an objection reciting the claimant's failure to comply with the requirements of TRCP 47 and seek a ruling and order from the trial court.

A comment to TRCP 47 states: "The further specificity in paragraphs 47(c)(2)-(5) is to provide information regarding the nature of cases filed and does not affect a party's substantive rights." The *Greenhalgh* rule should still be available to non-complying claimants since the case has not been "pleaded into" the expedited actions rule. It seems that counterclaimants can continue to rely on the *Greenhalgh* rule for a verdict that exceeds the damages claimed even if the case is filed and tried as an expedited action.

Discovery

House Bill 274 specifically mandated that the supreme court adopt rules to "address the need for lowering discovery costs in these actions and the procedure for ensuring that these actions will be expedited in the civil justice system." The court addressed this mandate by imposing specific limitations on discovery. Discovery is governed by and limited to "Level 1" under the provisions of TRCP 190.2, as amended.

Under the limitations imposed by the expedited actions process, the discovery period, like the prior version of a Level 1 Discovery Control Plan, "begins when the suit is filed." However, under the expedited process the discovery period now "continues until 180 days after the date the first request for discovery of any kind is served on a party." 190.2(b)(1). Ostensibly, the 180-day discovery period could begin running upon service of citation if the attached petition includes a request for disclosure or any type of discovery. This is not limited to written discovery requests. "Written discovery" as defined in TRCP 192.7 excludes deposition notices, but TRCP 190.2(b)(1) is not limited to "written discovery" and could encompass a deposition notice. By the time a defendant makes an appearance, the discovery period could be less than 180 days and it could be even shorter for a later served co-defendant or third-party defendant.

In addition to the 180-day limitation, each party may have not more than six hours in total to examine and cross-examine all witnesses in oral depositions. In a departure from the initial version of the rules the rules as adopted allow the parties to agree to "expand this limit up to ten hours in total, but not more except by court order." The court may modify the time allocated to depositions to prevent any party from gaining an unfair advantage. TRCP 190.2 (b) (2)

Additional limitations preclude any party from serving on any other party more than fifteen written interrogatories, excluding those asking a party only to identify or authenticate specific documents; fifteen written requests for production; and fifteen written requests for admissions. Each discrete subpart of an interrogatory or a request for production or admission is considered a separate request for purposes of the limitations. TRCP 190.2 (b) (3-5)

"In addition to the content subject to disclosure under TRCP 194.2, a party may request disclosure of all documents, electronic information, and tangible items that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses. A request for disclosure made pursuant to this paragraph" does not count against the fifteen requests for production limitation. TRCP 190.2 (b) (6)

Interestingly, the time limitations of TRCP 190 are imposed on a per-party basis, while those under TRCP 169 are imposed on a per-side basis. Litigants should consider this distinction when moving to adjust discovery or to modify trial time.

If a suit is removed from the expedited actions process of TRCP 169, the court must reopen discovery under TRCP 190.2(c), which specifies discovery will be conducted under TRCP 190.3 (Level 2) or TRCP 190.4 (Level 3), whichever is applicable. Any person previously deposed may be redeposed. On motion of any

party, the court ***should*** but is not required to continue the trial date if necessary to permit completion of discovery. TRCP 169(c)(3)

Although expedited actions are not subject to mandatory additional discovery under amended TRCP 190.5, the court may still allow additional discovery if the conditions of TRCP 190(a) [*sic* 190.2(a)?] are met. Comment to 2013 change

Finally, the limitations on discovery imposed by TRCP 190 do not impact discovery conducted under TRCP 202 (Depositions Before Suit or to Investigate Claims), or TRCP 621(a) (Discovery and Enforcement of Judgment). But TRCP 202 cannot be used to circumvent the limitations of TRCP 190. TRCP 190.6

Discovery and Trial Calendar

Upon request by any party, the court ***must*** set the case for a trial date within the ninety-day period following the conclusion of the 180-day discovery period. Conceivably, the request could come from the plaintiff immediately upon filing the lawsuit, and the court could set the case for trial on the first day following the conclusion of the discovery period, which means that the case could go to trial in fewer than 180 days from a defendant's answer if the discovery is triggered by a written discovery request included in the original petition served upon defendant. However, the court still must comply with TRCP 245 and 246 which prohibit a first trial setting with fewer than forty-five days notice from the court clerk (presuming the clerk received a request for notice by mail with a SASE.) A court may continue a case but not more than two times and not beyond an aggregate time limitation of sixty days. TRCP 169(d) (2)

Timeline:

Discovery period begins	190.2(b)(1)	Plaintiff files suit
180-day countdown begins	190.2(b)(1)	Upon service of any written discovery
Plaintiff designates experts	195.2	Upon response to RFD or 90 days before end of discovery period (this could be less than 90 days after defendant files an answer)
Defendant designates experts	195.2	Upon response to RFD or 60 days before end of discovery period
Discovery period ends	190.2(b)(1)	180 days after first written discovery served
Trial	169(d)(2)	Anytime within 90 days of conclusion of discovery period

Expert Testimony

A challenge to the admissibility of expert testimony can only be made as an objection to summary judgment evidence under TRCP 166a or during trial on the merits, unless the challenge is requested by the parties sponsoring the expert. *Daubert/Havner* motions are not an option unless made in the form of an objection to summary judgment evidence. As a practical matter the potentially short timelines for discovery, expert designation, and a trial setting may preclude squeezing in a TRCP 166a motion for summary judgment. The remaining avenue by which a party can challenge the admissibility of expert testimony is during the trial on the merits. However, though it seems that a challenge to an opposing party's expert would fall into the category of an "objection" and thus not count against the party's eight-hour trial allotment, it is not clearly stated in the rule. Motions to strike for late designation are not subject to these restrictions.

Alternative Dispute Resolution

The court may order ADR one time, unless the parties have agreed otherwise. However, a court-ordered procedure is limited to a single ADR process of not more than a half-day in duration and at a cost not more than twice the amount of applicable civil filing fees. Court-ordered ADR must be completed no later than 60 days before the initial trial setting. Finally, the rule requires the court to consider objections to an ADR referral unless prohibited by statute. The parties, on the other hand, may

agree to engage in any type of ADR. This seeming would allow a lengthier, more costly ADR process not bound by the one time or sixty-day restrictions.

Time Limits for Trial

Each side is allowed not more than eight hours to complete jury selection, opening statements, presentation of evidence, examination and cross examination of witnesses, and closing arguments. Only time spent on objections, bench conferences, bills of exception, and challenges for cause to a juror under TRCP 228 is not included in the mandatory time limit. On motion and a showing of good cause by any party, the court may extend the time limit to not more than twelve hours per side. TRCP 169(d)(3)

Motion to Extend Trial Presentation Time

This motion seeks to enlarge the "per-side" maximum trial presentation time limits from eight to twelve hours. The movant must establish "good cause" and the motion should be urged prior to the commencement of trial. The factors that support a finding of "good cause" are the same as those for removing the case from the expedited process. Since the rules do not vest the court with discretion to allow more than twelve hours per side, if the issues supporting good cause cannot be resolved within the twelve-hour limit, the case must be removed from the expedited process. Therefore, it might be good practice to submit a motion to adjust or extend time and a motion to remove, in the alternative.

Motion to Remove, TRCP 169(c)

A court must remove a suit from the expedited actions process upon a motion and a showing of good cause by any party or if any claimant, other than a counter-claimant, files a pleading or an amended or supplemental pleading that seeks any relief other than the monetary relief allowed by TRCP 169(a)(1). Such an amended pleading must demonstrate good cause if filed more than thirty days after the discovery period ends or within thirty days of the date the matter is set for trial, whichever is earlier. TRCP 169(c)(2)

This motion is implicated for both the discovery and trial limitations. The defendant should file a motion to remove as soon after filing the answer as an affidavit detailing the basis for good cause can be executed and presented in good faith. Regardless of whether a motion was filed prior to the conclusion of the discovery period, a motion should be urged once discovery is completed detailing the good cause for discharge as it relates to the trial limitations. The factors to be considered by the court include whether there are multiple claimants whose claims aggregate over $100,000, whether a defendant has filed a compulsory counterclaim in good faith that seeks relief other than that allowed in TRCP 169(a)(1), the number of parties and witnesses, the complexity of the legal and factual issues, and whether an interpreter is necessary. Comment 3, TRCP 169.

Upon removal from the expedited action process, the court ***must*** reopen discovery under TRCP 190.2(c). Additionally, the court ***should*** continue the case to permit the completion of discovery. The defendant should consider filing a motion for continuance immediately following removal setting forth the time required to complete discovery along with as detailed a list as is possible of the discovery needed to be completed. At a minimum, a defendant should consider redeposing any witness previously deposed.

A defendant should give some thought when arguing that good cause exists against being forced into the expedited process to the possibility that later, after significant preparation has been undertaken, the defendant may wish to oppose a claimant's motion to remove.

One who anticipates being sued on a claim unlikely to exceed $100,000 under circumstances where he would have a significant counterclaim faces a dilemma. In order to litigate his claim with the benefits of complete discovery and a full trial he must avoid the expedited actions process. He must determine whether it's best to win the race to the courthouse or to rely on establishing to the trial court's satisfaction the good faith of the

counterclaim or some other basis sufficient to remove the suit from the expedited process. Of course, if the case was filed in a county court-at-law with a jurisdictional limit of $200,000, the defendant is free to file a separate claim for more than the court's jurisdictional limit in another court with sufficient jurisdiction. Jurisdiction for a large counterclaim is not derivative of the jurisdiction over the plaintiff's case but is established separately.

Motion to Adjust or Equalize Time

This motion seeks to adjust or to equalize the "per-side" time permitted for presentation between the plaintiff(s) and defendant(s). TRCP 169 gives the trial court discretion to adjust the time per "side" based on its review of the pleadings, discovery, and any information or disclosures made during voir dire, but it does not specify that the "sides" be allocated the same amount of time. Where there are multiple defendants or claimants, the court must determine how to apply the maximum time limits "per side."

TRCP 169 (d)(3)(A) declares that "the term 'side' has the same definition set out in TRCP 233." TRCP 233 addresses peremptory challenges, and within it the term "side" "means one or more litigants who have common interests on the matters with which the jury is concerned." It "is not synonymous with 'party,' 'litigant,' or 'person.' " In multiple party cases, TRCP 233 requires that the trial judge determine whether any of the litigants aligned on the same side of the docket are antagonistic with respect to any issue to be submitted to the jury.

The defendant can bring to the attention of the trial judge any matter concerning the ends of justice and elimination of an unfair advantage. In its determination of antagonism, the court must consider the parties' pleadings, information disclosed by pretrial discovery, information and representations made during voir dire of the jury panel, as well as any information brought to the court's attention by other means. *Moore v. Altra Energy Techs.*, 321 S.W.3d 727, 741 (Tex. App.—Houston [14th Dist.] 2010, pet. denied); *Cecil v. T.M.E. Investments, Inc.*, 893 S.W.2d 38 (Tex. App.—Corpus Christi 1994, no pet.).

The time at which the trial judge must determine how time will be allocated to the "sides" in an expedited trial is not set out in TRCP 169. Under TRCP 233 the trial judge rules on the number of peremptory challenges following voir dire and prior to strikes since the rule addresses peremptory challenges. However, since voir dire counts against the time restrictions addressed in a motion to adjust or equalize, the motion should be made and ruled on prior to voir dire based on the pleadings and discovery responses. Then, if necessary, the motion should be made again following voir dire if additional information developed during voir dire representations and disclosures bears upon the request. The motion might properly be made again even if the initial motion was granted since a further adjustment of time may be appropriate as a result of the information gained through voir dire.

The language of TRCP 233, if modified to apply to trial time, might reasonably be read to provide:

> "In multiple party cases, upon motion of any litigant made prior to ~~the exercise of peremptory challenges~~ or following voir dire, it shall be the duty of the trial judge to ~~equalize the number of peremptory challenges~~ adjust trial time so that no litigant or side is given unfair advantage as a result of the alignment of the litigants and the ~~award of peremptory challenges~~ allocation of trial time to each litigant or side. In determining how ~~the challenges~~ time should be allocated the court shall consider any matter brought to the attention of the trial judge concerning the ends of justice and the elimination of an unfair advantage."

Good Cause

Good cause must be shown (1) under TRCP 169(3) to extend trial time, (2) under TRCP 169(c)(1)(A) to remove a case from the expedited process, and (3) under TRCP 169 (c)(2) when the motion to remove is filed untimely. The proof required to support a

motion to extend versus one to remove seems likely to differ more in degree than kind.

Black's Law Dictionary generally defines "good cause" as the burden placed upon a litigant to show why a request should be granted or an action excused. BLACK'S LAW DICTIONARY 213 (7th ed. 1999). However, the term "good cause" lacks a standardized meaning and can mean different things in different contexts. *Montgomery County Hosp. Dist. v. Brown*, 965 S.W.2d 501, 504 (Tex. 1998) (J. Gonzalez, concurring); *see also In the Interest of M.C.F.*, 121 S.W.3d 891, 896 (Tex. App.—Fort Worth 2003, orig. proceeding) (recognizing the different definitions of good cause depending on the circumstances). A court's interpretation of the term "good cause" changes depending on the situation. *Carpenter v. Cimarron Hydrocarbons Corp.*, 98 S.W.3d 682, 687 (Tex. 2002).

What does a motion to modify or terminate the process require? Initially, the proposed rules provided no guidance on the meaning of "good cause" as applied to a motion to remove a case from the expedited process. As adopted, however, the rules now give some guidance.

In Comment 3 to TRCP 169, the supreme court offers the following: "In determining whether there is good cause to remove the case from the process or extend the time limit for trial, the court should consider factors such as whether the damages sought by multiple claimants against the same defendant exceed in the aggregate the relief allowed under 169(a)(1), whether a defendant has filed a compulsory counterclaim in good faith that seeks relief other than that allowed under 169(a)(1), the number of parties and witnesses, the complexity of the legal and factual issues, and whether an interpreter is necessary."

Good cause to "adjust or equalize time" exists where justice demands that a party be allowed additional time to compensate for an imbalance created by the existence of a greater number of parties being allocated trial time on the opposing "side." Good cause would be based on the unfairness of holding each "side" to the same time limits. As noted above, if the trial court determines that "the ends of justice and the elimination of an unfair advantage" require awarding any side more than twelve hours, then good cause exists to remove the case from the expedited process.

Only time will tell what will prove to be a satisfactory showing of good cause in an expedited action setting. History being any guide, litigants can be expected to craft creative arguments for and against "good cause," which will be interpreted inconsistently until the high court has the opportunity to expand upon its commentary to the rules.

Conclusion

It remains to be seen whether claimants, given an opportunity, will tend to opt into or out of this new process. While it is "mandatory," it leaves ample room for artful pleading in all but the most straightforward monetary damage claims. Boutique firms or departments within firms might well specialize in prosecuting expedited civil actions. Larger firms in particular might see the expedited action as an ideal training ground for inexperienced trial lawyers. In fact, the slow (or, not so slow—depending on one's point of view) erosion of the civil jury trial is one justification offered for the development of the expedited action. The other justification, in fact the main justification, is to provide a cost-effective avenue to the courtroom for litigants. Only time will tell to what extent the expedited actions process will be pleaded into and how well it will fulfill the legislature's expectations. The ultimate question begged by Texas' mandatory approach is whether in a given case, it advances or retards fairness and justice: a question likely to be viewed and answered differently, depending on whose ox is being gored.

2013 Legislative Wrap-Up

By George S. Christian
TADC Legislative Consultant, Austin

TADC Closes Books on a Successful Legislative Session

The 83rd Texas Legislature ended its regular session on May 27. Governor Rick Perry immediately called a special session on the subject of redistricting and has expanded the special session call to include transportation funding, abortion restrictions, and sentencing 17-year-old convicted felons to life with parole.

Financing the state's future water needs topped the policy agenda this session. At the beginning of the session, Governor Perry, Lt. Governor Dewhurst, and Speaker Straus all called for the creation of a permanent state water implementation fund with $2 billion of seed money from the Rainy Day Fund. Despite the unity of the leadership, however, many conservative members of the House opposed using the Rainy Day Fund for this purpose, while a number of Democrats feared that funding water would take priority over restoring last session's $4 billion reduction in spending for public education. Conservative groups likewise opposed paying for water projects with the Rainy Day Fund because, they argued, such expenditures would "bust" the state's constitutional spending cap. The issue was finally resolved in the closing days of the session by proposing a constitutional amendment (SJR 1) establishing a constitutionally dedicated state water implementation fund. If the voters approve the amendment in November, $2 billion will be appropriated from the Rainy Day Fund without it counting against the spending cap.

With respect to the remainder of the budget, the Legislature restored most of the funding taken from public education in 2011, set aside $450 million in general revenue to repair roads in counties with soaring energy production, and made up a $4 billion shortfall in Medicaid. The state judiciary received a 12% pay increase (with a corresponding boost in legislative pensions), while other state employees will see a 1% increase in 2014 and another 2% in 2015. Responding to the Governor's call for tax relief, the Legislature also reduced the state franchise tax rate for the next two years, enacted a research and development tax credit (or alternative sales tax exemption), and passed rebates to electric ratepayers of money paid to the universal service benefit fund. All in all, about $1.6 billion will be returned to taxpayers, although most will probably see very little difference in their tax liability.

The Governor has already vetoed one bill: SB 346 by Sen. Kel Seliger (R-Amarillo) and Rep. Charlie Geren (R-Fort Worth). This bill addressed the so-called "dark money" problem in which certain tax-exempt political organizations not required to report political expenditures nevertheless engage in activities designed to favor or defeat candidates for public office. SB 346 would have required such organizations to report contributions and expenditures (including dues payments) in the same manner as political committees. In his veto message, the Governor cited First Amendment concerns with the required reporting.

Compared to the 2011 session, in which "loser pays" and expedited jury trials became major issues, 2013 was relatively quiet on the civil justice front. While it monitored several hundred bills, TADC focused its attention on a fairly limited number

of issues directly impinging on the civil trial practice and involving mandatory binding arbitration. The following discussion briefly summarizes the bills that passed, as well as those that didn't.

Filing of Medical Bills/Paid or Incurred:

TADC supported SB 679 by Sen. Robert Duncan (R-Lubbock), which relieves the obligation to file medical records with clerk until time of trial, as long as the records are timely served on each party. The bill amends §§18.001 and 18.002 to permit "paid" or "actually incurred" amounts to be added to the affidavit. As originally filed, the bill might have inadvertently limited or overruled the *Escabedo* decision. TADC raised this concern, and after several conversations with Sen. Duncan's office and TTLA, language was added to the bill clarifying that that only amounts actually paid or incurred could be admitted at trial. Related legislation, HB 1465 by Rep. Bryan Hughes (R-Mineola) and HB 3457 by Rep. Craig Eiland (D-Galveston) contained similar provisions and were superseded by SB 679. As of the date of this update, SB 679 was awaiting gubernatorial action.

Health Care Claims:

TADC likewise supported HB 2843 by Rep. Kenneth Sheets (R-Dallas), which requires a claimant to file the expert report on each defendant not later than 120 days of that defendant's answer (rather than the date of the original petition) and allows a defendant to object to the report not later than 21 days of the defendant's answer or service of the report, whichever is later. Although HB 2843 died on the House Calendar, the bill was later amended into HB 658 (see below) in the Senate and has gone to the Governor for his signature.

Made Whole Doctrine:

One of the most significant civil justice bills of the session addresses the "made whole doctrine," which the Supreme Court abrogated in the *Fortis* case. HB 1869 by Rep. Four Price (R-Amarillo) and Senator Duncan partially restores the doctrine as it relates to contractual liens in health insurance contracts. The bill establishes a "quasi-proportionate" recovery process designed to allow the plaintiff an adequate recovery before the insurer's subrogation lien attaches, which should ease the existing law disincentive to settle claims. The Governor has signed HB 1869, which takes effect January 1, 2014. TADC strongly supported passage of this bill.

Medicare Subrogation:

HB 658 by Rep. Kenneth Sheets (R-Dallas) tolls postjudgment interest on an unpaid balance of an award of damages subject to a CMS lien, provided that the defendant pays in response to a demand letter before the 31st day after receipt of the demand. TADC supported this bill, which has been sent to the Governor for his signature.

Litigation Financing:

The regulation of third party litigation financing pitted the U.S. Chamber of Commerce against the lawsuit financing industry. The U.S. Chamber-backed bill, HB 1595 by Rep. Doug Miller (R-New Braunfels), would have required disclosure of agreements in which a plaintiff borrows money using his or her lawsuit as the asset securing the loan, placed litigation loans under the interest rate cap applicable to consumer loans generally, and subjected lawsuit lenders to regulation by the Office of the Consumer Credit Commissioner. HB 1595 was heard in House Judiciary & Civil Jurisprudence Committee. A substitute version of the bill was reported from committee, but did not make it to the House calendar. A related bill, HB 1855 by Rep. Doug Miller (R-New Braunfels), dealt with disclosure of litigation financing agreements to parties in litigation. The bill was not heard in committee.

The lawsuit financing industry supported HB 1254 by Rep. Senfronia Thompson (D-Houston) and SB 1283 by Sen. Kevin Eltife (R-Tyler). This bill would have sanctioned litigation financing, codified industry best practices, and required lenders to be registered with the Texas Department of Licensing and

Regulation. HB 1254 was likewise heard in House Judiciary & Civil Jurisprudence Committee, but was not reported from committee. It is likely that this issue will be the subject of interim study and reappear next session in proposed legislation.

Employment Law:

Legislation to conform Texas law to the federal Ledbetter Act squeaked through the Legislature in the face of opposition from some (though not all) business groups. HB 950 by Rep. Senfronia Thompson (D-Houston) and Sen. Wendy Davis (D-Fort Worth) clarifies that the statute of limitations for a wage discrimination claim runs from the date the discriminatory employment practice begins, not the date of the compensation agreement between the employer and employee. Current Texas law provides that an employee must file an unlawful employment practice complaint with the Texas Workforce Commission civil rights division within 180 days after the alleged unlawful practice occurs. If the employee proves up the claim, he or she may recover up to two years of back pay. Appeal of the administrative review is to state district court. The net effect of HB 950 is to allow an employee who exhausts administrative remedies under current law to seek review in state court. A 2012 Texas Supreme Court decision had ruled that federal protections for wage discrimination did not extend to state law, forcing Texans to file legitimate claims in federal court (*Prairie View A&M v. Chatha*). The bill's fate in the Governor's office remains to be seen.

Substituted Service/Social Media:

HB 1989 by Rep. Jeff Leach (R-Plano) would have established a procedure to permit substitute service through service on social media. TADC opposed this legislation, which never received a hearing in House Judiciary & Civil Jurisprudence.

Worker's Compensation:

TADC closely monitored two bills of significant interest in the workers' compensation area. HB 1468 by Rep. Kenneth Sheets (R-Dallas) and SB 926 by Sen. Joan Huffman (R-Houston) would have reversed *In re XL Specialty Ins. Co.*, 373 S.W.3d 46 (Tex. 2012) by establishing that communications between an attorney representing a worker's compensation carrier and the employer (insured) in the administrative proceedings are protected by the attorney-client privilege. TADC supported the legislation in concept, but TTLA and organized labor opposed the bill as overbroad. HB 1468 passed the House and Senate committee, but was not considered on the floor.

SB 1049 by Sen. Leticia Van de Putte (D-San Antonio) sought to reverse *Tex. Mut. Ins. Co. v. Ruttiger*, 381 S.W.3d 430 (Tex. 2012), which abolished the common law cause of action for bad faith against a workers' compensation carrier. The bill received a hearing in Senate State Affairs, but never came out of committee.

Limits on Claims Against Insurers:

Several bills dealing with mandatory arbitration in an insurance setting were filed this session. HB 1407 by Rep. John Smithee (R-Amarillo) would have mandated that automobile insurance policies permit an *insured* to invoke arbitration. HB 1408 Rep. Smithee proposed to create an administrative dispute resolution process for claims brought under a policy issued by the Fair Plan. HB 2956, also by Rep. Smithee, would have prohibited insurers from using a form that requires pre-dispute arbitration arising from most insurance contracts (excludes TWIA). None of these bills were heard in committee.

HB 2125 by Rep. Van Taylor (R-Plano) provided claims under insurance policies governing property damage (excluding TWIA, Fair Plan, and Tex. Automobile Plan Association) must undergo an appraisal process (the cost of which as divided between the insurer and insured) as a condition to filing suit. The bill was reported out of House Insurance Committee late in the session and died in Calendars. TADC opposed this legislation.

Statute of Limitations--Insurance:

HB 1651 by Rep. Smithee and SB 851 by Sen. Larry Taylor (R-Friendswood) would have allowed an insurer in a homeowner or residential property insurance contract to limit the statute of limitations on first party claims to two years from the date of denial or three years from the date of loss. SB 851 was heard in Senate Business & Commerce but did not advance. HB 1651 was not heard in House committee, nor was HB 2086 by Rep. Ruth Jones McClendon (D-San Antonio), which established a 4-year statute of limitations for claims brought under Chapter 542 of the Texas Insurance Code. TADC opposed legislation truncating the statute of limitations on first party claims.

Asbestos/Silica Inactive Docket:

Asbestos practitioners with inactive cases should review HB 1325 by Rep. Doug Miller (R-New Braunfels) and Sen. Duncan, which permits dismissal of cases pending in the MDL asbestos/silica dockets in which the claimant has not served a complying report unless good cause is demonstrated for retention. The bill also extends limitations for re-filing when report can be obtained and provides for retroactive application of law in effect at the time the case was initially filed. The plaintiff's and defense asbestos bars negotiated the final version of the bill, which the Governor has signed into law. HB 1325 goes into effect on September 1, 2013.

Uninsured/Underinsured Motorist Actions:

A number of bills affecting UM/UIM actions were proposed this session, but none passed. HB 1773 by Rep. Ed Thompson (R-Pearland) would have barred an insurer from delivering, issuing for delivery, or renewing a named driver policy. The bill allowed an insurer to exclude individually named drivers, but not a class of drivers. HB 1773 passed the House but died in the Senate. HB 1558 by Rep. Stephanie Klick (R-Fort Worth) would have permitted an insured to recover attorney's fees against an insurer if the insured prevails in a UM/UIM action. HB 1774, also by Rep. Ed Thompson, would have barred an uninsured claimant from recovering non-economic or punitive damages in an action arising from an automobile accident. These bills were never heard in committee.

Barratry:

HB 1711 by Rep. Allen Fletcher (R-Tomball)--permits recovery of statutory barratry damages even if the attorney voluntarily voids the contract and adds a recoverable $10,000 penalty. As amended in the Senate, the bill excludes an action to recover actual damages and a penalty for barratry from the expedited trial rule. HB 1711 is awaiting the Governor's signature.

Technology Funding:

HB 2302 by Rep. Todd Hunter (R-Corpus Christi) and Sen. Royce West (D-Dallas) establishes a statewide electronic filing system fund financed by an increase in certain fees and court costs. Reported favorably from Senate Jurisprudence on April 3. TADC supports this bill, which has been sent to the Governor for his signature. Because the bill increases fees, it is likely to be closely scrutinized in the Governor's office.

Judicial Selection:

HB 2772 by Rep. Justin Rodriguez (D-San Antonio) and Sen. Robert Duncan (R-Lubbock) calls for a joint Senate-House interim study of the judicial selection system in Texas. The study will cover the statutory, trial, and appellate courts. The interim study committee will report findings and recommendations to the 2015 Legislature. HB 2772 has been sent to the Governor. SB 577 by Sen. Duncan, which established a non-partisan elect-appoint-retain system for judicial selection, and SB 103 by Sen. Dan Patrick (R-Houston), which eliminated straight-ticket voting in judicial races, both received a hearing in Senate State Affairs but did not get out of committee.

Defamation Mitigation Act:

The House has concurred with Senate amendments to HB 1759 by Rep. Todd Hunter (R-Corpus Christi) and Sen. Rodney Ellis (D-Houston). The bill provides that a person alleging injury to reputation may only maintain an action against the publisher of the defamatory information if the person requests a retraction or correction, or if the publisher actually publishes a retraction or correction. A claimant must request the retraction or correction within the applicable limitations period, but if the request is not made within 90 days of receiving knowledge of the publication, the claimant cannot recover exemplary damages. A publisher has the right to request from the claimant further information relating to the alleged falsity of the information, and if the information is not provided, the claimant cannot recover exemplary damages unless the publication was made with actual malice. HB 1759 further defines the circumstances under which a published retraction or correction is timely and sufficient. Publication of a timely and sufficient retraction or correction immunizes the publisher from exemplary damages, unless the publication was made with actual malice. A request for retraction or correction is not admissible at trial, unless the publisher introduces the retraction or correction in mitigation of damages. Finally, HB 1759 requires a defamation action to be abated until a claimant files a sufficient request for retraction or correction. HB 1759 has been sent to the Governor.

Interlocutory Appeals:

HB 2935 by Rep. Hunter and Sen. Ellis clarifies that an interlocutory appeal may be taken from the denial of a motion to dismiss under §27.003, CPRC, which provides certain expedited hearing rules for motions to dismiss a claim based on the exercise of a constitutional right. The bill addresses a split among the courts of appeals on the issue. HB 2935 has been sent to the Governor.

Judicial Compensation:

SB 1, the General Appropriations Act, gives a much-needed pay increase of about 12% to state judges and justices. TADC, TTLA, the State Bar, and other organizations interested in the judiciary strongly support the increase.

Exemplary Damages:

HB 3098 by Rep. Tryon Lewis (R-Odessa) sought to prohibit both the discovery and admissibility of a party's net worth as a component of exemplary damages. The bill was not heard in committee.

Appeals:

HB 3032 by Rep. Ana Hernandez Luna (D-Houston) required the Texas Supreme Court to adopt rules mandating the final disposition of appeals not later than one year after perfection and expedited resolution of interlocutory appeals within three months. The bill was not heard in committee.

Recusal:

HB 3380 by Rep. Todd Hunter (R-Corpus Christi) repealed §74.053(c)-(f), which govern objections to the assignment of a trial judge, and provides that a trial judge may only be recused or disqualified if timely motion is made and granted under Rule 18(a) or 18(b), TRCP. The bill was heard in House Judiciary & Civil Jurisprudence but did not advance.

Franchise Tax:

Part of the Governor's tax relief initiative this session was an across-the-board reduction in the franchise tax. HB 500 by Rep. Harvey Hilderbran (R-Kerrville) and Sen. Glenn Hegar temporarily reduces the rate of the franchise tax 2.5 percent in 2014 and, revenue permitting, 5 percent in 2015. The bill also allows taxpayers a new minimum deduction of $1 million (an effective expansion of the small business exemption).

Texas Association of Defense Counsel PAC

The Political Action Committee of the Texas Association of Defense Counsel — *TADC-PAC*

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2013 TADC Trial Academy

Mike Shipman, with Fletcher, Farley, Shipman & Salinas, LLP in Dallas and **Clayton Devin** with Macdonald Devin, P.C. in Dallas, served as Co-Chairs of TADC=s 31st Trial Academy which was held in Dallas on April 26th & 27th, 2013 at the Sheraton by the Galleria.

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 Tonya Parker, of the 116th Judicial District (Dallas County) and the The Honorable Martin Hoffmann, 68th Judicial District (Dallas County).

Mike and Clayton 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 2013 TADC Trial Academy.

Faculty

Mike Shipman, Fletcher, Farley, Shipman & Salinas, LLP

Clayton Devin, Macdonald Devin, P.C

Andy Payne, PayneMitchell Law Group

Andy Sommerman, Sommerman & Quesada, L.L.P.

Dean Gresham, PayneMitchell Law Group

Doug Fletcher, Fletcher, Farley, Shipman & Salinas, LLP

Lewis Sifford, Sifford Anderson & Co., P.C

Jim Cowles, Cowles & Thompson, P.C.

W. Edward Carlton, Quilling, Selander, Lownds, Winslett and Moser, P.C

John M. Cox, John M. Cox & Associates, P.C.

Elizabeth Fraley, Fraley & Fraley, L.L.P

Alan Harrel, Atchley, Russell, Waldrop & Hlavinka, L.L.P.

Karl Koen, Gaunt, Earl, Binney & Koen, L.L.P.

Vernon Krueger, Krueger, Bell & Bailey, LLP

Paige Lueking, Cooper & Scully, P.C.

Patrick Madden, Macdonald Devin, P.C.

Randy Nelson, Thompson, Coe, Cousins & Irons, L.L.P.

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Philipa Remington, Stinnett Thiebaud & Remington

Rick Rickman, Hallett & Perrin, P.C

Mark Stradley, The Stradley Law Firm

William Toles, Fee, Smith, Sharp & Vitullo, L.L.P.

Graduates

Nicole Anchondo, Ray, Valdez, McChristian & Jeans, P.C.

Donnie Apodaca, The Berry Firm, PLLC

Joseph A. Baker, Cotton, Bledsoe, Tighe & Dawson, P.C

Keith L. Cook, Cooksey & Marcin, PLLC

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Sina E. Griffith, The Berry Firm, PLLC

Christopher Jaquez, Ray, Valdez, McChristian & Jeans, P.C.

Gus Knebel, Mills Shirley, L.L.P.

Stephanie D. Lee, Cotton, Bledsoe, Tighe & Dawson, P.C.

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Marcos Rosales, Beck | Redden LLP

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Matthew Sikes, Thompson & Knight LLP

Tracy Smith, Thompson & Knight LLP

Rick Zuniga, Atlas, Hall & Rodriguez, L.L.P.

****

Philipa Remington & Judge Tonya Parker

Trial Academy Co-Chair Clayton Devin, Judge Martin Hoffman, Jim Cowles, Al Ellis & Academy Co-Chair Mike Shipman

AMICUS CURIAE COMMITTEE NEWS

The year has gotten off to a running start and there have been several significant amicus submissions.

Ruth Malinas (Plunkett & Gibson, Inc.) and Roger Hughes (Adams & Graham, L.L.P.) 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. The Texas Supreme Court heard oral argument on Jan. 13, 2013.

Michael Eady (Thompson, Coe, Cousins & Irons, L.L.P.) filed an amicus brief in support of *Kia Motors Corp. v. Ruiz*, 348 S.W.3d 465, 474 (Tex. App.—Dallas 2001, rev. granted). 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 granted review and the case is set for oral argument on Sept. 9, 2013.

Brent Cooper (Cooper and Scully, P.C.) filed an amicus brief in support of Petitioner in *Brookshire Bros., Ltd. v. Aldridge*, Case No. 10-0846. This is a spoliation issue in a premises liability case. The trial court gave a spoliation instruction because the storeowner preserved only eight minutes of security video that covered the fall; plaintiff argued that Brookshire should have preserved the entire day so as to show how long the spill had been there. The trial court found Brookshire did not destroy the rest of the tape in "bad faith," but gave the instruction anyway. TADC argues for a "bad faith" standard. Review was granted, and argument was on Sept. 12, 2012.

Roger Hughes (Adams & Graham, L.L.P.) filed an amicus brief to support the petition for mandamus in *In re Discount Tire*, Case No. 13-0118. This mandamus challenges whether the trial court properly granted plaintiffs a new trial based on a factual sufficiency challenge to the verdict. This was a wrongful death suit arising from an accident caused by tire failure. Plaintiffs settled with the manufacturer and pursued Discount Tire for negligence in using a spare tire that was too old. The trial judge decided there was insufficient evidence that a manufacturing defect in the spare tire also was a producing cause of the failure; the judge also decided that the jury's award of $0 for the parents' loss of companionship and society was against the great weight of the evidence. This mandamus raises the issues of (a) does the trial judge apply the same factual sufficiency review standard as

the courts of appeal, (b) can the merits of the ruling be reviewed by mandamus, and (c) how does the 'abuse of discretion' standard apply to judge the trial court's ruling? Merits brief has been requested.

Roger Hughes (Adams & Graham, L.L.P.) filed an amicus brief to support the petition for review for G*enie Ind., Inc. v. Matak,* 2012 WL 6061779 (Tex. App.--Corpus Christi Dec. 6, 2012, pet. filed)(memo. opin.). This is a product liability design defect death case in which the court of appeals affirmed a $1.3 million verdict for plaintiff. The basic issues are (a) is a proposed alternative safer design legally adequate if it violates industry and OSHA standards, and (b) is the product defective if the accident can happen only if the product is intentionally misused and the warnings against that misuse are adequate?

Ruth Malinas (Plunkett Gibson, Inc.) has been authorized to file amicus briefs in support of the petitions for review in *Loera v. Fuentes*, __ S.W.3d __, 2013 WL 351140 (Tex. App.-- El Paso Jan. 30, 2013, pet. filed), and *Nabors Wells Services Ltd. v. Romero*, __ S.W.3d __, 2013 WL 350992 (Tex. App.--El Paso Jan. 30, 2013, pet. filed). These are companion cases on the admissibility of the plaintiff's failure to wear seat belts. In both cases, a collision ejected the claimant. In one the evidence was admitted; in the other it was excluded. The El Paso Court concluded such evidence was inadmissible.

An amicus brief has been authorized to support of the petition for mandamus *In re Champion Indust. Sales*, __ SW3d __, 2012 WL 5362204 (Tex. App.--Corpus Christi, Oct. 29, 2012, orig. proc.), now Case No. 12-0952 in the Texas Supreme Court. This is an important case concerning transfers to the MDL court designated to handle silica products liability claims. Plaintiff filed a wrongful death claim alleging her husband died from exposure to toxic substances including silica. Her expert did not find silicosis, but found that 26% of the toxic substances his lungs was silica. After the deadline to challenge the transfer passed, Plaintiff amended to dismiss any claim based on silica. The MDL court ruled this deprived it of subject matter jurisdiction and "dismissed" the transfer for lack of jurisdiction. This case raises important questions for MDL courts. By phrasing this as a jurisdictional issue claimants can raise it at any time and also avoid an interlocutory appeal for orders remanding the case.

TADC Amicus Curiae Committee

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2013 West Texas Seminar

A Joint Seminar with the

New Mexico Defense Lawyers Association

Texas Association of Defense Counsel, Inc.
400 W. 15th Street, Suite 420
Austin, Texas 78701

512-476-5225 – FX 512-476-5384
tadc@tadc.org

August 9-10, 2013 ~ Inn of the Mountain Gods ~ Ruidoso, NM

PROGRAM AND REGISTRATION

Approved for 4.5 Hours CLE, including 1.0 hours ethics

Friday, August 9, 2013 ***(All times Mountain Time)***

6:00-8:00pm Opening Reception

Saturday, August 10, 2013

7:30am Welcome & Introductions
Leonard R. (Bud) Grossman, Craig, Terrill, Hale & Grantham, L.L.P., Lubbock
Bryan Evans, Atwood, Malone, Turner & Sabin, P.A., Roswell

7:45-8:15am EXPEDITED JURY TRIALS IN TEXAS
Chantel Crews, Ainsa Hutson, LLP, El Paso

8:15-8:45am WHAT THE CIVIL LITIGATOR NEEDS TO KNOW ABOUT CRIMINAL LAW
Slater Elza, The Underwood Law Firm, P.C., Amarillo

8:45-9:15am FROM THE RIG TO THE COURTROOM: OIL AND GAS LAWS UPDATE
Pat Long Weaver, Burleson, LLP, Midland

9:15-9:45am COURTROOM DECORUM AND CIVILITY IN TEXAS
The Honorable Stacy Trotter, Shafer, Davis, O'Leary & Stoker, Inc., Odessa

9:45-10:00am B R E A K

10:00-10:30am MANAGING THE TRIPARTITE RELATIONSHIP IN NEW MEXICO
Bill Anderson, Orraj, Anderson, Obrey-Espinoza, Las Cruces

10:30-11:00am VOIR DIRE IN NEW MEXICO: SPOTTING ADVOCATES & AVOIDING ADVERSARIES
Bryan Garcia, The Narvaez Law Firm, Albuquerque

11:00-11:30am COURTROOM DECORUM AND CIVILITY IN NEW MEXICO
The Honorable Freddie Romero, 5th Judicial District of New Mexico, Division II

11:30-Noon RECENT DEVELOPMENTS IN ARBITRATION
Jerry T. Fazio, Owen & Fazio, P.C., Dallas

12:00-1:00pm LUNCH PANEL DISCUSSION: TEXAS & NEW MEXICO

1:00pm ADJOURN TO ENJOY RUIDOSO! (limited tee times at the links)

2013 TADC West Texas Seminar
August 9-10, 2013
Inn of the Mountain Gods ~ Ruidoso, NM
287 Carrizo Canyon Road ~ Mescalero, NM, 88340
Ph: 800/545-9011

Pricing & Registration Options

Registration fees include Friday & Saturday group activities, including the Friday Evening welcome reception, Saturday breakfast, CLE Program and related expenses. If you would like New Mexico CLE credit, please notify the TADC office and you will be provided with a certificate of attendance for the New Mexico Bar.

Registration for Member Only (one person)	$125.00
Registration for Member & Spouse/Guest (2 people)	$145.00

Hotel Reservation Information

For hotel reservations, **CONTACT THE INN OF THE MOUNTAIN GODS DIRECTLY AT 800/545-9011 and reference the TADC West Texas Seminar.** The TADC has secured a block of rooms at a FANTASTIC rate. It is **IMPORTANT** that you make your reservations as soon as possible ***as the room block is limited***. Any room requests after the deadline date, or after the room block is filled, will be on a space available basis.

DEADLINE FOR HOTEL RESERVATIONS IS JULY 20, 2013

TADC Refund Policy Information

Registration Fees will be refunded ONLY if a written cancellation notice is received at least SEVEN (7) Business days prior (AUGUST 1, 2013) to the meeting date. A $25.00 Administrative Fee will be deducted from any refund. Any cancellation made after August 1, 2013 IS NON-REFUNDABLE.

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August 9-10, 2013
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☐ *Check if your spouse/guest is a TADC member*

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In order to ensure that we have adequate materials available for all registrants, it is suggested that meeting registrations be submitted to TADC by July 20, 2013. This deadline coincides with the deadline set by the hotel for hotel accommodations.

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A CHECK in the amount of $_____ is enclosed with this form.

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2013 Winter Seminar

Sheraton Steamboat – February 6-10, 2013 – Steamboat Springs, CO

The 2013 TADC Winter Seminar was held at the magnificent Sheraton Steamboat Resort in Steamboat Springs, Colorado, February 6-10, 2013. The Illinois Defense Counsel joined with the TADC in the first joint meeting between the two associations. Randy Walters with the Dallas law firm of Walters, Balido & Crain, L.L.P. and Greg Curry with the Dallas firm of Thompson & Knight LLP, served as Program Co-Chairs. The program featured practical topics, with presentations on Social Media and the Preservation of the Jury Trial as well as Making your Case to the Jury and the Supreme Court Update. Members enjoyed 8.5 hours of CLE and fresh powder every day!

Brenda Hight & Max Wright

IDC President Howard Jump
& TADC President Dan Worthington

Jimmy, Rachel & David Brenner with Randy Walters, Karen Brenner & Sal Davila

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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

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Mrs.
I Ms. _____ hereby apply for membership in the Association and certify that I am
(circle one) Please print
a member in good standing of the State Bar of Texas, engaged in private practice; that I devote a substantial amount of my professional time to the practice of Civil Trial Law, Personal Injury Defense and Commercial Litigation. I am not now a member of any plaintiff or claimant oriented association, group, or firm. I further agree to support the Texas Association of Defense Counsel's aim to promote improvements in the administration of justice, to increase the quality of service and contribution which the legal profession renders to the community, state and nation, and to maintain the TADC's commitment to the goal of racial and ethnic diversity in its membership.

Preferred Name (if Different from above): _____

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PAPERS AVAILABLE

2013 TADC Winter Seminar – Steamboat Springs, CO – February 6-10, 2013

Jurisdiction and Venue After the Federal Courts Jurisdiction and Venue Clarification Act of 2011 – Peter R. Jennetten – 70 pgs. (2 parts)

Texas Supreme Court Update – Gregory D. Binns – 14 pgs.

What the $&*@ Is an ECM and How Do You Download It? Answering This and Other Burning Questions from Your First Commercial Truck Collision Case – Ron T. Capehart – 27 pgs.

2013 Spring Meeting – Austin, Texas – April 3-5, 2013

Jurors Asking Questions of Witnesses / Procedure and Jury Instructions Regarding Allowing Jurors to Ask Questions of Witnesses / Taking Notes Instructions to the Jury – The Honorable Orlinda Naranjo – 3 pgs.

Civil Trial Jury Charge Update – Greg C. Wilkins – 7 pgs.

The Ethical Trial Lawyer – Ross Pringle – 11 pgs.

Rule 169 Expedited Actions – A Summary and Strategic Considerations from the Defense Perspective /Final Approval of Rules for Dismissal and Expedited Actions – Keith B. O'Connell – 10 pgs.

Secondary Payer Issues – Ranelle M. Meroney – 13 pgs.

Supreme Court of Texas Update/March 1, 2012 – February 28, 2013 – Justice Jeffrey S. Boyd – 99 pgs.

Why the Preservation of the Jury Trial is Critical – Mackenzie S. Wallace – 27 pgs.

COST OF PAPERS

10 pages or less $10.00
11-25 pages.....$20.00
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41-65 pages.....$40.00
66-80 pages.....$50.00
81 pages or more $60.00

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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.

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 tadcews@tadc.org
- 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

TEXAS ASSOCIATION OF DEFENSE COUNSEL, INC.

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

Date: _____ ☐ NORMAL ☐ **RUSH** (Surcharge applies)

Attorney: _____ ☐ TADC Member ☐ **Non-Member** (Surcharge applies)

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 sheets, if required.)

Designated as: Plaintiff Defense Unknown

Name: _____ Honorific: _____

Company: _____

Address: _____

City: _____ State: _____ Zip: _____ Phone: _____

Areas of expertise: _____

_____

➢ ☐ **SPECIALTY Search**: (Provide a list of experts within a given specialty.)

Describe type of expert, qualifications, and geographical area, if required (i.e., DFW metro, South TX, etc). Give as many key words as possible; for example, 'oil/gas rig expert' could include economics (present value), construction, engineering, offshore drilling, OSHA, etc. A detailed description of the case will help match requirements.

_____

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➢ ☐ **INTERNET:** INCLUDE Internet Material DO NOT Include Internet Material

A research fee will be charged. For a fee schedule, please call 512 / 476-5225 or visit the TADC website www.tadc.org

SUBSTANTIVE LAW NEWSLETTERS

INCLUDED ON THIS CD ARE THE FOLLOWING NEWSLETTERS:

- **Appellate Law**
  Editors: Scott P. Stolley & Doug Salisbury, Thompson & Knight, L.L.P.; Dallas
- **Commercial Litigation**
  Editors: John J. Bridger & Jason McLaurin, Strong, Pipkin, Bissell & Ledyard, L.L.P.; Houston
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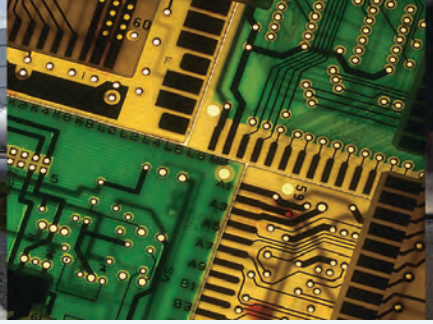


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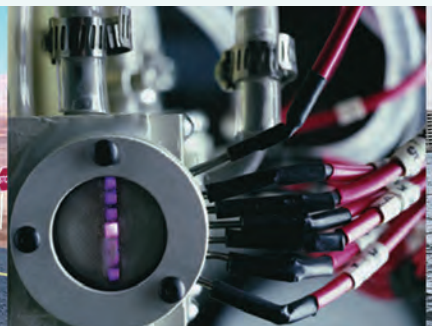

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