



TADC

TEXAS ASSOCIATION OF DEFENSE COUNSEL

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

SPRING/SUMMER 2025

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The TADC Magazine is a publication of the Texas Association of Defense Counsel

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TADC CALENDAR OF EVENTS

July 16-20, 2025

2025 TADC Summer Seminar
The Grand Hyatt - Vail, Colorado

September 17-21, 2025

2025 TADC Annual Meeting
The Hotel Emma - San Antonio, Texas

October 16, 2025

2025 TADC Deposition Bootcamp
Zoom Meeting/Virtual

February 4-6, 2026

2025 TADC Winter Seminar
Steamboat Grand/Steamboat Springs, Colorado

March 6-7, 2026

2026 TADC Trial Academy
South TX College of Law, Houston
Springhill Suites – Houston, Texas

April 29- May 3, 2026

2026 TADC Spring Meeting
Atlantis Resort – Nassau, The Bahamas

July 15-19, 2026

2026 TADC Summer Seminar
Coeur d'Alene Resort - Coeur d'Alene, Idaho

September 23-27, 2026

2026 TADC Annual Meeting
San Luis Resort - Galveston, Texas



By: Mike Shipman

TADC President

Fletcher, Farley Shipman & Salinas, LLP, Dallas

PRESIDENT'S MESSAGE

Summer is upon us, and we are already halfway through 2025. WOW!! This year has flown by, and we have had a very successful year already. This is in large part because of the efforts of your TADC Board, Bobby Walden, and Alex Mangum. This was also a legislative year and your Legislative Committee, along with our legislative consultant, George Scott Christian, worked tirelessly going through and reviewing bills that affect our members, clients, and the civil justice system. This legislative session started with more than 30 new House members and perhaps because of this, a lot more bills were filed in 2025 than in 2023. Members filed a total of 9,014 and joint resolutions, up 4.6% over 2023. However, fewer bills ended up passing. TADC diligently monitored numerous bills, including the so-called nuclear verdict bill. However, after many changes were made, the bill, in its final version, was pulled from consideration. The trucking bill failed and stalled in the House committee, never making it to the House floor. The one positive thing coming out of this legislative session was a pay increase for our district judges. This is the first pay increase since 2013. All in all, there were no significant legislative changes to report. I do want to personally thank the Legislative Committee, George Scott Christian, the

Executive Committee, and others who worked so hard during this session.

Winter Meeting

The Winter Meeting took place in Steamboat Springs, Colorado and was co-chaired by Darin Brooks and Sean Swords. Thanks to Darin and Sean for putting on such a great seminar. Steamboat Springs also answered the call as always. The accommodations were great as was the snow. I'm also a big fan of downtown Steamboat Springs.

Spring Meeting

Our Spring Meeting was held in beautiful Louisville, Kentucky at the historic Brown Hotel, which was amazing. Louisville provided the perfect backdrop for this event and many of us actually had the opportunity to visit Churchill Downs. A big thank you to Christy Amuny and Amy Stewart for co-chairing this seminar. They put on a fantastic seminar with great speakers and topics, and we even learned more about BOURBON!!!

Summer Meeting

Our Summer Meeting will be held in Vail, Colorado, July 16th through 20th. If you haven't already signed up, please do so. This is going to be an incredible meeting. Co-chairs Gayla Corley and Stephen Edmundson have put together a terrific program which you will not want to miss. Oh, and did I mention it is going to be in VAIL, COLORADO!!! While the temperature in Texas will be 100 degrees +, it will be around 75 degrees in Vail. NICE!!

Annual Meeting

Our Annual Meeting this year will be in San Antonio at Hotel Emma. You will not want to miss this meeting. TADC is celebrating its 65th Anniversary this year and we are planning a reception for our past Presidents to honor their contributions to TADC. I'm also excited to announce that we have two past presidents, Michele Smith and Tom Ganucheau, co-chairing our program. They are putting together a great list of speakers and topics. I would encourage everyone to sign up when the brochure comes out. I expect the hotel block at Hotel Emma to fill up quickly.

I also want to report on the 2025 "Catch a CLE Wave", A Seminar for Young Lawyers which was held June 20-22, 2025 at the Margaritaville Beach Resort on South Padre Island. This is the second year we've held this seminar, and it was a great success, again!!! I believe we doubled the attendance from last year. A big shout out to co-chairs Jim Hunter

and Sean Swords for putting together such a great program. The topics were very relevant and the speakers awesome!! It was great meeting the young lawyers in our organization, and I'm convinced that the future of TADC is in great shape. I'm excited to see these young lawyers become leaders.

We also have a Motions Practice seminar coming up in August being co-chaired by Mike Bassett and Jennie Knapp. This will be an outstanding program for younger attorneys, and even some of us older ones!!!

After becoming your president in September, I have been amazed at the hard work and dedication of our members and your board. You have gone above and beyond the call of duty and it is this passion for what we do that makes my job so easy and enjoyable. When asked to do something, I've not heard the word "no" a single time. Lastly, I want to encourage all of you to be involved in the work TADC does and to take advantage of all the benefits TADC has to offer. If you ever have a question or concern, please reach out to me.





By: George S. Christian
TADC Legislative Consultant

TADC 89TH REGULAR SESSION LEGISLATIVE WRAP-UP

The recently concluded 89th Regular Session was remarkable for a number of reasons. We saw the first large-scale tort reform fight since 2003, a record increase in judicial compensation, and a legislative vote of confidence in the new business courts. Additionally, voters will have a chance to overhaul the Commission on Judicial Conduct and give the Governor and Texas Supreme Court additional authority to discipline wayward judges. Tort reform advocates, however, are licking their wounds over the failure of legislation aimed at reining in noneconomic and medical damages and closing a gaping loophole in the 2019 commercial trucking statute. There seems to be no question that another effort will be mounted next session.

This report summarizes TADC bills of interest, as well as other bills relevant to the courts and administration of justice. It includes bills that passed and were signed into law, as well as some that didn't make it.

TADC BILLS OF INTEREST

HB 40 by Landgraf (R-Odessa): Makes numerous changes to Chapter 25A, Government Code (business court). **The engrossed version:**

- Amends § 11.101(e), CPRC, to clarify that a prefiling order entered by the business court applies to each court in the state.
- Amends § 15.003(c), CPRC, to provide that an interlocutory appeal from the business court must be taken to the 15th Court of Appeals.

- Amends § 19.003(a), CPRC, to allow a person interested in a judgment, order, or decree of the business court to file an application with the business court clerk.
- Amends numerous statutory provisions to add “business court” where the statutes refer to district or county courts;
- Amends § 65.022, CPRC, to authorize a business court judge to grant a writ returnable to another business court judge if that judge cannot be reached by the ordinary and available means of travel and communication in sufficient time to implement the purpose sought for the writ.
- Amends § 65.023(a), CPRC to require a writ of injunction to be tried in the business court division of the county in which the party against whom the writ is filed is domiciled.
- Amends § 151.011, CPRC, to clarify that a special judge’s verdict must comply with the requirements for a verdict by the “referring” court, “including any applicable requirements for the issuance of a written opinion”;
- Conforms § 151.012, CPRC, to include any applicable written opinion requirement if the special judge does not timely submit the verdict;
- Conforms § 151.013, CPRC, to broaden the right of appeal from the order of the referring judge’s court as provided by *applicable law*, including the TRCP and TRAP.

- Clarifies that Chapters 171 and 172, CPRC, do not confer on the business any new or additional jurisdiction.
- Amends § 171.096, CPRC, to require an initial application for arbitration filed in a business court to establish venue in a county in a division of the court.
- Amends § 25A.001(14), Government Code, to clarify that a “qualified transaction” includes a “series of related transactions” and lowers the threshold from \$10 million to \$5 million.
- Makes active (contingent on funding, which is not provided for the next biennium) the Second, Fifth, Sixth, Seventh, Ninth, and Tenth Divisions, and includes Montgomery County in the existing Eleventh Division;
- Amends § 25A.004(b) to clarify that the business court’s concurrent jurisdiction with district courts extends to actions in which a district court has exclusive jurisdiction.
- Amends § 25A.004(d), to reduce the amount in controversy threshold from \$10 to \$5 million for actions arising from a qualified transaction and adds a “business,” “commercial,” or “investment” contract or transaction in which the parties agreed to submit disputes to the business court.
- Further adds to the court’s jurisdiction an action to enforce an arbitration agreement, appoint an arbitrator, or review an arbitral award regardless of the amount in controversy if the claim is otherwise within the court’s jurisdiction.
- Adds actions arising or related to intellectual property and trade secrets;
- Clarifies that the amount in controversy for jurisdictional purposes is the total amount of all joined parties’ claims.
- Expands the court’s supplemental jurisdiction to include a claim requiring joinder or intervention of an additional party and removes the current law requirement that a party can block proceeding on a claim within the court’s supplemental jurisdiction by not agreeing to it.
- Clarifies that the business court does not jurisdiction over a claim seeking to foreclose on a lien on real or personal property “an individual owns at the time the action is filed” (unless the claim falls within the court’s supplemental jurisdiction).
- Excludes claims related to a consumer transaction as defined by § 601.001, Business & Commerce Code, to which a consumer is a party arising out of a violation of state or federal law, regardless of whether the claim is otherwise within the court’s supplemental jurisdiction.
- Instructs SCOTX to adopt rules of civil and judicial procedure for the court.
- Amends § 25A.006 to provide that a party’s governing documents may establish venue in the court and to establish the time in which a party requesting removal to the business court was served with process.
- Amends § 25A.009 to allow a judge appointed to the business court to begin state employment and receive compensation for not more than 30 days before the beginning of the judge’s term.
- Amends § 25A.012 to require a business court judge who determines on the judge’s own motion that the judge not hear a case pending in the judge’s court because the judge is disqualified or subject to recusal to enter a recusal order, request the administrative PJ of the business court to assign another judge, and take no further action in the case (PJ not required to assign such a case to a different division of the court).
- Adds § 25A.0135 to exempt business court

judges from judicial training requirements not germane to the jurisdiction of the court.

- Establishes a procedure by which business court judges select an administrative presiding judge pro tempore for a two-year term.
- Entitles a business court judge to reimbursement for expenses.
- Makes various changes related to the administration of the business court system.
- Allows counties to seek reimbursement from the state for providing courtroom space.
- Authorizes the chief justice to assign an active business court judge to serve as a visiting judge of a court located in the judge's division.
- Requires OCA to report on the case activity of a court during the prior year.
- Provides that actions commenced on or before 9/1/24 that are within the business court's jurisdiction may be transferred to and heard by the court on an agreed motion of a party and permission of the business court.
- Amends § 74.162, Government Code, to permit the MDL panel to transfer appropriate cases to the business court.
- Amends § 659.012, Government Code, to entitle a business court judge to additional compensation from the state in the amount equal to the difference between the judge's base salary and the maximum combined base salary from all state and county sources paid to district judges (entitles a business court judge serving as an APJ an additional amount).
- Makes conforming changes;

Signed by Governor on 6/20. Effective 9/1/25.

JUDICIAL CONDUCT AND COMPENSATION
SJR 27 by Huffman (R-Houston): Amends §

1-A, Art. V, Texas Constitution, to change the composition of the State Commission on Judicial Conduct and augment the disciplinary authority of the Commission and the Texas Supreme Court.

- Gives the governor 7 appointees and SCOTX 6, with no specification of category as in current law (except no more than one justice or judge from each type of court can be appointed);
- Provides that if the Commission determines that a person engaged in wilful or persistent conduct that is clearly inconsistent with the proper performance of the judge's duties, the commission shall issue a public sanction or may issue a private sanction if the person has no prior sanctions (other than for conduct constituting a criminal offense);
- Gives the commission additional discretion to recommend to the review tribunal the removal or retirement of the person;
- Eliminates the provision requiring review tribunals to be selected "by lot" and giving the Chief Justice authority to appoint the members of the tribunal;
- Gives the review tribunal additional discretion to order suspension without pay for a specified period;
- Gives the Commission discretion to recommend suspension with or without pay pending a final disposition of a charge.

Election date 11/4/25.

SB 293 by Huffman (R-Houston): Amends Chapter 33, Government Code (State Commission on Judicial Conduct) as follows:

- Amends § 22.302(a), Government Code, to require an appellate court hearing oral argument through teleconferencing to participate in the argument from a courtroom or other state-provided facility.
- Adds § 23.303, Government Code, to establish new procedures of motions for summary judgment. Requires the business

court, a district court, or a statutory county court to hear oral argument or consider without oral argument a motion for summary judgment not later than 45 days after the date the response was filed and to file with the clerk and provide to the parties a written ruling on the motion not later than 90 days after the date of argument or consideration. Requires entry into the docket of the date the motion was considered without argument. Requires the clerk to report compliance to the OCA at least quarterly. Directs OCA to prepare an annual report of compliance, which shall be made available to the public and sent to the governor, lieutenant governor, and speaker. Prohibits SCOTX from modifying or repealing this procedure by rule.

- Amends § 33.001(a) to add justices of the peace to the definition of “judge.”
- Amends § 33.001(8-a) to define “official misconduct” as defined by Article 3.04, Code of Criminal Procedure.
- Amends § 33.001(a)(9) (definition of “review tribunal”) to eliminate the requirement that the panel of seven court of appeals justices be selected “by lot.”
- Amends § 33.001(b) to add a judge’s failure to meet deadlines, performance measures, or clearance rate requirements set by statute, administrative rule, or binding court order to the list of “wilful or persistent conduct.”
- Amends § 33.001(b) to add to the definition of “wilful or persistent conduct that is clearly inconsistent with the proper performance of a judge’s duties” a “persistent or wilful violation of Article 17.15, Code of Criminal Procedure” (setting bail).
- Amends § 33.0211 to allow a complainant to submit additional documentation supporting the complaint not later than 45 days after the date the person filed the complaint.
- Adds § 33.02115 to authorize the commission to assess an administrative penalty against a person who knowingly files a false complaint.
- Adds § 33.02111 to impose a 7-year limitations period on a commission investigation, running from the date the alleged misconduct occurred or the complainant knew or should have known of the misconduct (allows the commission to investigate anyway on a finding of good cause).
- Amends § 33.0212 to require commission staff to conduct a preliminary investigation upon receipt of a complaint and draft recommendations for action; provide to the judge written notice of the complaint, the results of the preliminary investigation, and the staff’s recommendation; requires the staff, not later than the 10th business day before a scheduled commission meeting, to provide a report to the commission listing each complaint for which a preliminary investigation has been conducted by that the investigation report has not been finalized, the results of the preliminary investigation, and the staff’s recommendation; requires the commission to finalize the investigation report not later than the 120th date following the date of the first commission meeting at which a complaint appeared in the staff report and to determine any action to be taken; provide the judge with written notice of the action within 5 days of the meeting and to post notice of the action on the commission’s website within 7 days after the meeting; permits an extension by the commission of up to 240 days (current law is 270 days); eliminates the executive director’s authority to request an additional 120 days extension.
- Further provides that if a complaint alleges multiple instances of misconduct

or multiple complaints are filed against a judge, the commission may order an additional extension of up to 90 days.

- Requires each member of the commission to certify an investigative report finalized under this section by signing the report (electronic signatures are permitted).
- Requires the commission, upon sanctioning a judge, to inform the governor, lieutenant governor, speaker, presiding officer of each legislative standing committee with primary jurisdiction over the judiciary, the chief justice of the supreme court, the OCA, and the presiding judge of the administrative judicial region where the court of the sanctioned judge is located.
- Amends § 33.0213 to authorize the commission to issue a sanction or censure regarding a complaint that is also the subject of a law enforcement investigation, provided the commission's investigation would not jeopardize the law enforcement investigation.
- Amends § 32.022 to allow the staff to recommend the commission dismiss a complaint it finds unfounded or frivolous or to terminate an investigation if the staff determines administrative deficiencies in the complaint preclude further investigation.
- Amends § 33.023 to require the commission to conduct a preliminary investigation of a complaint involving substance abuse by a judge and present the results to commission members within 30 days of the filing of the complaint. If the commission determines that the judge's alleged substance abuse or physical or mental incapacity brings into question the judge's ability to perform the judge's official duties, it must provide the judge written notice of the complaint and subpoena the judge to appear. If after the judge's appearance at next regularly scheduled meeting the commission decides to require the judge to submit to a physical

or mental examination, the commission shall suspend the judge with pay for up to 90 days and provide the judge written notice of the suspension.

- Provides that if after receipt of a written report by an examining physician or the physician's deposition testimony about the report the commission determines the judge is unable to perform, it shall recommend to SCOTX suspension of the judge from office or enter into an indefinite voluntary agreement with the judge for suspension with pay until the commission determines the judge is fit to resume duties. Further requires that if the judge refused to submit to an ordered examination, the commission may petition a district for an order compelling the judge to submit and recommend to SCOTX suspension of the judge from office.
- Amends § 33.034 to provide that if the commission issues a public reprimand based on the judge's persistent or wilful violation of Art. 17.15, Code of Criminal Procedure, the commission shall send notice to the governor, lieutenant governor, speaker, presiding officers of the relevant legislative committees, the chief justice of SCOTX, the OCA, and the presiding judge of the relevant administrative judicial region (House version adds each judge of a constitutional county court in the geographic region in which the reprimanded judge serves).
- Amends § 33.037 to require the commission to recommend a judge's suspension to SCOTX within 21 days of initiating a formal proceeding against a judge based on Art. 17.15.
- Adds § 33.041 to direct the OCA to establish a judicial directory containing contact information for every judge and providing the commission with access thereto.
- Adds § 72.0396, Government Code, to

require a district court judge to submit semiannual reports to the presiding judge of the administrative region attesting to: (1) the number of hours the judge presided over the judge’s court; (2) the number of hours the judge performed judicial duties other than presiding, including case-related duties, administrative tasks, and completed continuing education. Requires the presiding judge of the region to submit the reports to OCA. Requires OCA to make an annual report to the governor, lieutenant governor, speaker, and presiding officers of the relevant committees. Directs SCOTX to adopt rules providing guidelines and instruction regarding reporting, including rules establishing a penalty for submission of false information and providing guidance on the form and manner of reporting.

- Amends § 73.003(e), Government Code, to eliminate the discretion of a transferee court and the parties or their attorneys to participate in oral argument from any location through the use of teleconferencing technology.
- Amends § 74.055(c), Government Code, to allow a retired or former judge to be listed as a visiting judge if a special court of review reviewed and rescinded a reprimand or censure, unless the judge has received more than one public sanction (excluding sanctions reviewed and rescinded by a special court of review).
- Amends § 659.012 to; (1) raise a district judge’s base salary from \$140,000 to \$175,000; (2) raise the additional compensation for the chief justice or presiding judge of an appellate court from \$2,500 to 7 percent of the base salary of the other justices or judges of the court; (3) eliminates the current cap of \$2,500 less than the base salary of a supreme court justice; (4) excludes the additional

compensation from the presiding judge’s or chief justice’s combined base salary from all state and county sources for purposes of determining whether the judge’s or justice’s salary exceeds the applicable limitations in § 659.012(a)(2)-(4); (5) reconfigures the base salaries of local administrative district judges based on the number of counties in the district; and (6) entitles a business court judge who serves as an administrative presiding judge to supplemental compensation.

- Amends § 665.052(b), Government Code, to add to the definition of “incompetency” a “persist or wilful violation of Article 17.15, Code of Criminal Procedure.”
- Amends § 814.103, Government Code, to raise the retirement annuity for service credited in the elected class of membership to an amount equal to the number of years of service credit, time 2.3% of \$175,000.
- Provides that beginning August 31, 2030, and every five years thereafter, the Texas Ethics Commission shall consider an equitable increase in the elected class retirement annuity.
- Further caps the annuity for elected class members at 100%, as applicable, of the dollar amount on which the annuity is based (\$175,000 for now, subject to later adjustment by the Ethics Commission) or the state salary of a district judge on which the annuity is based under § 814.103(b).
- Amends § 814.103, Government Code, to provide that any increase in the state base salary paid to a district judge does not apply to a standard service retirement annuity for a retiree or beneficiary if the retiree retired before 9/1/25, and the amount of the state base salary in the current appropriations bill continues to apply until the 90th Legislature or a later legislature enacts legislation increasing the base salary, at which point

this provision sunsets. Makes a similar amendment to § 834.102.

- Amends § 837.103 to: (1) authorize a retiree who resumes full-time service other than by assignment who elects to rejoin the retirement system to provide notice of the election not later than 60 days after the retiree takes the oath of office; (2) provide that a retiree who rejoins shall resume making member contributions at 9.5% of the state contribution; (3) provide that a retiree who rejoins and completes at least 24 months of resumed service, on the retiree’s retirement from resumed service, to a recomputed annuity reflecting the highest annual state salary earned by the retiree while holding a judicial office included in the retirement system; and (4) provides that if the retiree who rejoins does not complete 24 months of resumed service, the retirement system shall resume suspended annuity payments and issue a refund of the retiree’s accumulated member contributions made during the period of resumed service.
- Amends §§ 840.1025(b) and 840.1027(b), Government Code, to raise the retirement contribution rate from 6% to 9.5%.
- Directs SCOTX and CCA to adopt rules implementing relevant provisions by March 1, 2026.
- Directs the Commission to adopt rules implementing changes to § 33.001(b) as soon as practicable after 9/1/25.
- Provides that changes to § 33.001(b) and 665.052(b) apply only to an allegation of judicial misconduct received by the Commission on or after 9/1/25, regardless of when the alleged misconduct occurred.
- Directs the OCA to prescribe relevant procedures for the reporting and establish the judicial directory as soon as practicable after 9/1/25.
- Directs SCOTX to adopt rules prescribing the form of the semiannual reports as soon as practicable after 9/1/25.
- Directs the presiding judges to strike former or retired judges who are ineligible to serve because of multiple sanctions from their lists and forbids their assignment to any court on or after 9/1/25.
- Makes conforming changes governing applicability to retirees who resume service.
- Effective 9/1/25, except that the application of the changes to §§ 33.001(b) and § 665.052(b) take immediate effect.

Signed by Governor on 6/20. Effective 9/1/25.

SB 2878 by Hughes (R-Tyler): Omnibus court bill.

- Redesignates the Second 25th Judicial District as the 522nd Judicial District and changes the boundaries to include only Gonzales and Guadalupe Counties.
- Requires the 173rd district court (Henderson County) to give preference to civil and family law matters.
- Changes the boundaries of the 274th Judicial District to include only Comal and Hayes Counties and eliminates concurrent jurisdiction with the Second 25th Judicial District.
- Requires the 392nd district court to give preference to criminal cases.
- Amends § 24.591(c), Government Code, to allow the district clerk of the 451st district court (Kendall County) to serve as clerk in all criminal and civil matters, including family matters, except the county clerk serves as clerk in Class A and Class B misdemeanor cases, juvenile matters, probate matters, and guardianship matters (requires each to establish a separate docket).
- Amends § 24.60043 to make the same change for the 498th district court in Kendall County.

- Creates the 490th Judicial District composed of Brazoria County.
- Creates the 492nd Judicial District composed of Colorado and Lavaca Counties.
- Creates the 501st and 502nd Judicial Districts composed of Fort Bend County.
- Creates the 503rd Judicial District composed of Rockwall County.
- Creates the 504th Judicial District composed of Ellis County.
- Creates the 511th Judicial District composed of Comal County.
- Creates the 512th Judicial District composed of Williamson County.
- Adds five district courts with preference for civil cases in Harris County, 513th-517th.
- Requires the Tarrant County Criminal District Courts No. 3 and 4 to give preference to criminal cases.
- Removes Sabine County from the 1st Judicial District with respect to the district attorney (now only San Augustine County) and provides that Sabine County voters elect a district attorney for the 273rd Judicial District (creates that office on 9/1/28).
- Provides that the voters of Maverick County elect the district attorney for cases in district court and further that the district attorney of the 293rd Judicial District represents the state in matters arising in the 365th Judicial District in Maverick County.
- Provides that the voters of Dimmit and Zavala Counties elect a district attorney for the 365th Judicial District (effective 1/1/29).
- Authorizes the Maverick County commissioners court to supplement the state salary of the district attorney and set the amount of supplemental compensation paid in that county for matters arising in the 365th Judicial District.
- Amends § 46.002, Government Code, to make conforming changes.
- Repeals §§ 24.126(b) and (d), §§ 24.127(b) and (c), and § 24.451(b), Government Code.
- Amends § 22.004(h-1), Government Code, to raise the expedited trial amount in controversy limit for statutory county courts from \$250,000 to \$325,000.
- Amends § 25.0003(c), Government Code, to raise the concurrent jurisdictional limit for civil cases in statutory county courts from \$250,000 to \$325,000.
- Amends § 25.0007(c), Government Code, to require 12-person juries in statutory county courts in which the matter controversy exceeds \$500 but does not exceed \$325,000.
- Directs funds deposited in the judicial fund from statutory county courts to either the treasury by the OCA for fees paid using the electronic filing system, or to the comptroller for fees paid to an officer of the court.
- Directs the comptroller to remit excess statutory probate court fees back to each county.
- Amends § 25.0062(b) to direct the district clerk to serve as clerk of a county court in civil cases in which the matter in controversy exceeds \$325,000.
- Expands the jurisdiction to a county court at law in Atascosa County to include civil cases up to \$1 million, suits to decide title to real or personal property, suit to enforce a lien on real property, suit for right to property valued at \$500 more than that has been levied, and suit to recover real property;
- Expands the jurisdiction of a county court at law in Bowie County to include concurrent jurisdiction in specialty court programs, misdemeanor cases, family law cases and proceedings, and probate and guardianship matters, as well as civil matters up to \$325,000 (12-member jury).

- Creates a new county civil court at law in Harris County.
- Creates a second Probate Court in Hidalgo County.
- Expands the jurisdiction of a county court at law in Hidalgo County to include all civil cases (currently limited to up to \$750,000).
- Expands the jurisdiction of all the county courts at law in Potter County to certain felony matters.
- Expands the jurisdiction of a county court at law in Tom Green County to share concurrent jurisdiction in family law cases.
- Amends § 25.2452 to include proceedings under the Estates Code in matters to be filed in the Wichita County court at law and to give that court concurrent jurisdiction in civil cases with an amount in controversy that exceeds \$500 but does not exceed \$200,000, as well as appeals from justice courts.
- Amends § 25.2704(a) to give the 2nd Multicounty Court at Law concurrent jurisdiction in civil cases.
- Repeals §§ 25.0212(d) and 25.1723(c), Government Code.
- Amends § 25.0022, Government Code, to permit a former or retired justice of an appellate court to serve as a visiting judge.
- Adds § 25.00255 to authorize a presiding judge to deny a motion of recusal or disqualification that does not comply with TRCP 18a without a hearing (the order must state the manner in which the motion failed to comply with the rule).
- Further provides that a noncomplaint motion of recusal or disqualification is a motion for disqualification for the purpose of determining whether a tertiary recusal motion has been filed.
- Amends § 74.003(e), Government Code, to change compensation for a retired judge or justice to a pro rata amount equal to compensation received by a court of appeals justice, calculated based on the state salary paid to a justice with eight years of service.
- Amends § 74.046(b), Government Code, to provide for compensation for a former or retired judge or justice assigned as a judicial mentor.
- Amends § 74.059 to authorize a judge assigned to court in a county in the Texas-Mexico border region to conduct a proceeding, other than a trial, or perform a judicial action from any location in the state using videoconference, teleconference, or other electronic means.
- Amends §§ 74.061(h) and (i), Government Code, to based compensation of a retired judge or justice assigned to a district court on the state salary paid to a district judge with eight years of service.
- Adds § 74.061(k) to entitle a judge assigned to court in a county in the Texas-Mexico border region to compensation equal to the maximum salary of a district judge from state and county sources if the PJ certifies that exigent circumstances require the assignment.
- Adds § 54.001, Government Code, to require a master, magistrate, referee, or associate judge to have been licensed to practice law in Texas for at least five years generally, but maintains the two-year requirement for selected statutory purposes.
- Adds § 54.1601 to provide for Bell County criminal magistrates.
- Makes conforming changes in Chapter 54 regarding qualifications of magistrates.
- Adds § 54B to provide for criminal associate judges in Coke, Concho, Irion, Runnels, Schleicher, Sterling, and Tom Green Counties.
- Amends § 659.012, Government Code, to provide a business court judge with an

annual salary supplement from the state in the amount of the difference between the judge’s annual base salary and maximum combined base salary from all state and county sources paid to a district judge.

- Makes numerous changes regarding grand jurors, including a permanent exemption for persons 75 or older.
- Amends § 62.001 to conform the jury wheel to new disqualifications.
- Amends § 62.102, Government Code, to disqualify from jury service a convicted felon and to qualify a person who has not served as a petit juror for six days during the preceding three months in county court or six months in district court.
- Amends § 62.106(a) to apply the age exemption to a person 75 or older (current law is over 75).
- Amends § 62.109, Government Code, to require the district clerk to maintain a current list of each person temporarily or permanently exempt from jury service.
- Further requires the court clerk to send a monthly report of persons disqualified for felony convictions to the voter registrar.
- Transfers § 233.014, Election Code, to Chapter 30, CPRC, creating a new § 30.023 regarding special procedures for contesting a constitutional amendment election.
- Amends § 22.220, Government Code, to bar a party from filing a notice of appeal requesting assignment to the 15th Court of Appeals unless the notice includes a matter arising out of or related to the case that is within the court’s exclusive jurisdiction.
- Amends § 253.152(7), Election Code, to include justices of the 15th Court of Appeals in the definition of “statewide judicial office.”
- Amends § 22.216(n-2) to provide for the creation of Places 4 and 5 of the 15th Court of Appeals to be filled by initial appointment (Place 4 in the court’s fourth year, Place 5 the following year).
- Amends § 51.303, Government Code, to require the district court clerk to accept an application for a Chapter 82, Family Code, protective order and to make paper and electronic records more identifiable and searchable.
- Amends § 57.002(d) to allow a justice court, municipal court, or municipal court of record in a county with 50,000 or more to appoint a spoken language interpreter who is not a certified or licensed court reporter.
- Adds § 71.0354 to define “prosecuting attorney” to include a county attorney, district attorney, or criminal district attorney and to require prosecuting attorneys to report certain performance data to the Judicial Council (including bail information).
- Amends § 72.015(c) to direct the judicial security division to develop a model court emergency management plan as a resource for court security committees.
- Amends § 72.016 to expand confidentiality of judges’ personal information to OCA employees and Commission on Judicial Conduct employees and their family members.
- Amends § 74.024(d) to require SCOTX to provide, rather than mail, copies of rules and rule amendments.
- Amends § 72.083 to authorize OCA to develop an alternative performance measure to assess the efficient and timely adjudication of probate and mental health matters for purposes of the annual report.
- Amends § 74.051(c), Government Code, to entitle a presiding judge to an annual salary based on the number of district courts, business courts, and statutory county courts in the administrative region, the number of associate judges under the Family Code, and the number of retired or former judges named on the list for the region and raises the compensation levels.
- Redesignated § 74.092(b) as § 74.0922 and requires a court security committee

to meet at least once annually and submit recommendations to the county commissioners.

- Adds Subchapter D-1, Government Code, to require the OCA to hold an annual leadership conference to provide specified information to presiding judges, local administrative judges, and court administrators (including court budgets, court activity statistics and case-level information required to be reported, duties of the local administrative judge, and other matters).
- Amends § 75.001(d) to permit retirees who make the statutory election to be considered a state judge for the purpose of appointment to a judicial branch board, commission, or council.
- § 406.206 to add proceedings under Title 1, Family Code to the electronic signature authority currently applicable to Title 5.
- Amends § 659.012 to raise the base salary of a local administrative judge who is a district judge from \$5,000 more than the judge’s maximum state salary to 3% of the annual base in a county with three or four district courts, 5% in a county with 5-9 courts, or 7% in a county with 10 or more courts (includes 7% for business court judges who serve as local administrative judge);
- Repeals § 74.051(b), Government Code.
- Directs the OCA to conduct a study on digital court reporting and make recommendations not later than October 1, 2026.
- Adds §§ 51.3033 and 51.503, and § 191.0041, Local Government Code, to require that a certified copy of an original document on file in a district, joint, or county clerk’s office to include specified information.
- Adds Subchapter K, Chapter 45A, Code of Criminal Procedure, to establish a diversion program for children alleged to have engaged in conduct constituting

a misdemeanor by fine only, other than a traffic offense.

- Contains other provisions relating to juvenile boards in certain counties.
- Amends § 16.073, CPRC, to provide that a claim sought to be arbitrated is subject to the same limitations period that would apply to the claim if it had been brought in court, as well to as to provide that commencing an action in a court of competent jurisdiction tolls limitations for arbitration of the same claim.
- Amends § 30.015, CPRC, to require each party or the party’s attorney in a civil action to provide the clerk written notice of the party’s name, party’s current address, and for a party who is an individual, the last three digits of the party’s SSN or Texas DL.
- Requires municipal courts to develop court emergency management plans.
- Amends § 21.049, Property Code, to permit notice of a special commissioners’ decision to be sent by a delivery method described under Rule 21a, TRCP (current law requires certified or registered mail).

Vetoed by Governor on 6/23. The Governor’s veto message indicated that this bill will be placed on a special session agenda later this summer. He gave the reason for his veto as language concerning expunction of criminal records.

TADC BILLS OF INTEREST THAT FAILED

NUCLEAR VERDICTS

SB 30 by Schwertner (R-Georgetown): Makes numerous changes to medical and noneconomic damages. The House committee substitute shows in red. Changes (both added and stricken language) that will be made on the floor in an agreed floor amendment appear in blue.

- Amends § 41.001, CPRC, to add definitions of “health care expenses,” “health care

services,” “injured individual,” “letter of protection,” “physician,” “provider,” and “third-party payor”:

- Adds § 41.015, CPRC, to provide that if a third-party payor paid for a health care service, supply, or device, the evidence offered to prove the amount of medical damages is limited to evidence of the amount paid, plus amounts paid by an insured for coinsurance, deductibles, or copayments;
- Provides that if a third-party payor did not pay for the service, supply, or device, a party may offer and the court shall admit the following evidence may be offered regarding the reasonable value of necessary health care services]: (1) evidence of amounts paid by non-third-party payors to providers (but not to purchase an account receivable or as a loan) if paid without agreement for the provider to refund, rebate, or remit money to the payor, injured individual, claimant, or claimant’s attorney or anyone associated therewith; and (2) Medicare allowable amounts, maximum allowable workers’ comp rates, the 50th percentile of amounts allowed to participating providers in the geozip during the calendar quarter in which the service was provided;
- Provides that if a claimant gives a notice of intent within the § 18.001(d) affidavit deadline the following shall be admitted: (1) the average amounts collected by the provider for the service during the preceding year, (2) the provider’s range of contracted rates with commercial insurers, and the provider’s billed charges, and (3) the provider’s billed charges;
- Prohibits a party from compelling a provider by pretrial discovery request or subpoena to provide any of that information unless the claimant services notice of intent as provided above;
- Provides that, except as provided by SCOTX rules, for each service, supply, or device a provider’s statements or invoices submitted into evidence must include Current Procedural Terminology, Healthcare Common Procedure Coding System, or Evaluation and Management code if the service, etc. has such a code, a description of the service, and the date on which the service was provided;
- Allows a party to offer and requires the court to admit evidence of Medicare, Workers’ Comp, or commercial provider rates through expert witnesses or cross-examination of another party’s witness if the offering party gives at least 45 days’ notice before trial;
- Adds § 41.016, CPRC, to require a claimant to disclose (1) any letter of protection related to the action; (2) any agreement under which a provider may kick back any money to a payor, injured individual, claimant, claimant’s attorney or anyone associated therewith; and (3) the identity of any provider who provided services to the injured individual, together with an authorization to all other parties allowing them to obtain all of the injured individual’s medical records relating to the claim;;
- Requires a claimant, on request of a party, to state the name, address, and telephone number of each person who provided to the claimant or injured individual the contact information of a provider that provided a service to injured individual, even if the person is or was an attorney for the claimant or injured person;
- Requires a provider, on request of a party, to provide (1) the number of persons an attorney to the action referred to the provider in the preceding two years and (2) the total amount paid to the provider

in the preceding two years by or on behalf of persons referred by an attorney to the action;

- Mandates admission into evidence (1) medical records showing health care services, etc. provided to the injured individual to diagnose, alleviate, cure, treat, or heal the injury, (2) a letter of protection if a provider’s medical records, billing statements, or testimony will be presented, and (3) referral information if a provider’s medical records, billing statements, or testimony will be;
- Provides that the TRE apply except as otherwise provided by §§ 41.015 and 41.016;
- Applies to an action (†) commenced on or after the effective.

Died in Conference Committee.

LUCIO AMENDMENT

SB 39 by Birdwell (R-Granbury)/HB 4688 by Leach (R-Plano): Repeals §§ 72.054(c), (d), and (e), CPRC, which permit a plaintiff to introduce certain evidence in the first phase of a bifurcated trial to show negligent entrustment. Amends § 72.053(a) to expand the definition of “regulation or standard” to include a policy or procedure promulgated or adopted by the owner or operator of the motor vehicle. Amends § 72.053(b) to provide that evidence is only admissible in the first phase of a bifurcated trial if it is admissible under other law.

Died in House JCJ.

OTHER LEGISLATION OF INTEREST TO THE ADMINISTRATION OF JUSTICE

Judicial Matters/Practice of Law

SB 1574 by Zaffirini (D-Laredo): Adds § 71.040, Government Code, to direct the Texas Judicial Council by rule to develop a centers of excellence program to identify, support, and recognize justices and judges “who excel in serving their communities

and in representing the judiciary.” Requires the council to consider a justice’s or judge’s governance, access, fairness, case flow management, and court operations; and the compliance of the justice’s or judge’s court with statutory or procedural requirements for judicial reporting, court security, fee collection, indigent defense, and guardianship fraud and abuse prevention. Requires a justice or judge eligible for recognition as a center of excellence to apply for recognition on a form and in the manner prescribed by the council. **Signed by Governor on 6/20. Effective 9/1/25.**

SB 2127 by Zaffirini (D-Laredo): Amends § 74.003(b), Government Code, to require a former or visiting judge assigned to a matter to certify to the chief justice a willingness not to hear any matter involving a party who is a current or former client of the justice or judge for the duration of the assignment. Limits the certification of willingness not to appear as an attorney in any court to the court to which the judge is assigned. **Signed by Governor on 6/20. Effective 9/1/25.**

SB 304 by Perry (R-Lubbock): Amends § 29.003, Government Code, to authorize the governing body of a municipality to provide that a municipal court has jurisdiction over the enforcement of municipal ordinances related to health and safety and nuisance abatements. Grants concurrent jurisdiction to municipal courts with district courts for municipally-owned property in the ETJ. Authorizes the municipal court to issue pertinent search warrants and seizure warrants. **SB 304 filed without signature by the Governor on 5/15. Effective 9/1/25.**

HB 2733 by Canales (D-Edinburg): Amends § 38.12, Penal Code, to expand the criminal offense of prohibited barratry and solicitation a solicitation made through a direct message on a social media platform or another electronic communication. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 2760 by Villalobos (R-Corpus Christi): Amends § 212.201(a), Labor Code, to specify that judicial review of a TWC decision is by an action in a county court at law or district court. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 4325 by Moody (D-El Paso): Raises the amount of the penalty for barratry from \$10,000 to \$50,000. **Filed without signature. Effective 9/1/25.**

SB 387 by Zaffirini (D-Laredo): Raises the personal bond required of a judge presiding in the court over guardianship proceedings to \$500,000. **Signed by Governor on 6/20. Effective 9/1/25.**

SB 664 by Huffman (R-Houston): Establishes uniform practice, qualification, and residency requirements for appointment as a master, magistrate, referees, associate judges, and hearing officers. Requires training on bail requirements. Directs the local administrative judge to enforce standards and report violations. **Signed by Governor on 5/30. Effective date 9/1/25.**

SB 992 by Nichols (R-Jacksonville): Requires the attorney general to approve or deny a contract for legal services submitted by a state agency not later than the 25th day after receipt. Requires the attorney general to state the reasons for denying approval. **Signed by Governor on 5/29. Effective date 9/1/25.**

SB 1220 by Hughes (R-Tyler): Adds § 23.002, Government Code, to provide that exhaustion of civil or administrative remedies is not a prerequisite to vesting in a trial court subject matter jurisdiction over a criminal action over which the trial court would otherwise have jurisdiction under other law. **Signed by Governor on 6/20. Effective 6/20/25.**

Workers' Compensation

HB 331 by Patterson (R-Frisco)/SB 1932 by Hinojosa (D-McAllen): Amends § 607.056, Government Code, to expand the heart attack or stroke presumption for first responders to “routine” stressful or strenuous physical activity that occurs not later than 8 hours after the end of the responder’s shift. Expands application of the presumption to activities involving law enforcement. **Signed by Governor on 5/24. Effective 5/24/25.**

HB 2488 by Bell (R-Forney): Adds § 410.0055, Labor Code, to authorize the worker’s compensation division to conduct a remote contested case hearing on a determination of good cause or mutual agreement of the parties. **Signed by Governor on 6/20. Effective 9/1/25.**

Procedure, Discovery, and Privilege

HB 2884 by Landgraf (R-Odessa): Adds Chapter 28, Civil Practice & Remedies Code, to require a claimant in an action against a defense contractor to disclose, as part of initial disclosure required by TRCP 194, whether the claimant or the claimant’s attorney has received direct or indirect funding or support from any individual, entity, or government affiliated with a sanctioned or embargoed nation and the identity of all sources of such funding. Makes disclosure a continuing obligation. Bars assertion of privilege or other exemption from disclosure. Authorizes a court to impose sanctions, including a stay or dismissal of the action. **Signed by Governor. Effective 5/28/25.**

HB 4081 by Vasut (R-Angleton): Adds § 134A.0065, CPRC, to establish a statutory process for sealing a document containing alleged trade secrets. Allows any person to intervene as a matter of right at any time before or after judgment in an action to seal or unseal a document. Provides that the trial court retains continuing jurisdiction to seal or unseal a document. Prescribes procedures for a motion to unseal a document filed under seal. Provides that an order granting or denying a motion

to unseal a document is considered to be severed from the action and is an appealable final judgment by a party or intervenor who participated in the hearing. Bars SCOTX from adopting conflicting rules. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 4145 by Dyson (R-College Station): Amends § 146.002, CPRC, to allow a health care provider to submit a bill to the claimant’s attorney by the 1st day of the eleventh month after the services were rendered. **Signed by Governor on 6/20. Effective 9/1/25.**

SB 2411 by Schwertner (R-Georgetown): Adds §§ 1.0056 and .0057, Business Organizations Code, to provide that a code reference or grant of jurisdiction to a district court includes a reference or grant of concurrent jurisdiction to the business court, if that court has subject matter jurisdiction. Provides for the supremacy of Texas law, though managerial officials of a domestic entity may consider laws or decisions in other states in exercising their powers. Permits the governing documents of a domestic entity to require exclusive jurisdiction and venue in Texas. Shares a number of common provisions with HB 15. **Signed by Governor on 5/27. Effective 9/1/25.**

Administrative Procedures

HB 3146 by Bumgarner (R-Flower Mound): Repeals § 12.032(a), (e) (MOU between the Ag Commissioner and SOAH to conduct administrative hearings); § 22.018, Human Resources Code (MOU between HHS and SOAH); §§ 40.066(a), (b), and (d), Human Resources Code (MOU between DSPS and SOAH); § 40.004, Insurance Code (MOU between TDI and SOAH); § 402.073(a), Labor Code (MOU between TDI and SOAH for workers’ comp cases); and § 524.033(c) and (d), Transportation Code (MOU between DPS and SOAH). Sends contested cases directly to SOAH. **Signed by Governor on 6/20. Effective 9/1/25.**

SB 14 by King (R-Weatherford): Establishes the Texas Regulatory Efficiency Office. Provides that court is not required to give deference to a state agency’s construction of a rule. Directs a court to review questions of law de novo. **Signed by Governor on 4/23. Effective 9/1/25.**

Jury Matters

HB 2637 by DeAyala (R-Houston): Adds § 30.0071, CPRC, to require a party to a civil action seeking a jury trial to file a written demand for a jury trial with the court clerk and pay a \$50 jury fee at least 30 days before the first scheduled trial date. Amends § 62.102, Government Code (general qualifications for jury service), to disqualify a convicted felon. Amends § 62.106(a), Government Code, to lower the exemption age to 75 (currently “over 75). Amends § 62.109, Government Code, to authorize the district clerk to exempt from jury service a person with a physical or mental impairment or with an inability to comprehend or communicate in English. Requires the district clerk to maintain a list of persons permanently or temporarily disqualified. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 4749 by Landgraf (R-Odessa): Provides that a person may serve as a grand juror in a county of less than 1,000 if the person resides in contiguous county in the same judicial district and is qualified to vote in that county. Provides that in a county of less than 1,000, the jury wheel may be reconstituted by using voter registration lists and holders of valid Texas driver’s licenses or valid DPS-issued identification cards. Qualifies otherwise qualified jurors in those counties who reside in a county contiguous to the summoning county. **Signed by Governor on 6/20. Effective 9/1/25.**

Insurance

SB 1257 by Hughes (R-Tyler): Requires group health insurance plans that cover an enrollee’s or procedure to cover all possible consequences

of the treatment, any testing or screening gender transition necessary to monitor the mental and physical health of the enrollee on an annual basis, and any procedure or treatment necessary to reverse it. Requires the insurer to cover subsequent treatment even if the enrollee was not engrossed at the time of the gender transition procedure. Exempts ERISA plans. **Signed by Governor on 5/24. Effective date 9/1/25.**

SB 1238 by Kolkhorst (R-Brenham): Amends § 544.002, Insurance Code, to bar an insurer from refusing to provide coverage or providing differential coverage on the basis that an individual is widowed. **Signed by Governor on 5/20. Effective 9/1/25.**

SB 926 by Hancock (R-Richland Hills): Adds § 843.322, Insurance Code, to authorize an HMO to provide incentives for enrollees to use certain physicians or providers through modified deductibles, copayments, coinsurance, other cost-sharing provisions. Imposes on an HMO a fiduciary duty to engage in cost-sharing incentives or establishing a tiered network plan for the primary benefit of the enrollee or group contract holder. Adds § 1301.0047, Insurance Code, to apply the same provision to insurers. Amends § 1460.003, Insurance Code, to allow a health benefit plan issuer from publishing physician rankings or classifications into tiers unless: (1) the standards are promulgated by commission rule; (2) the issuer discloses the ranking to the affected physician at least 45 days in advance of publication and identifies which products or networks the ranking will be used for; and (3) the issuer gives each physician an easy-to-use process to identify discrepancies between the standards and the physician's ranking. (Current law is similar, but the bill requires the commissioner to adopt the standards by rule, whereas current law allows the issuer to use nationally-recognized standards.) Amends § 1460.005(c), Insurance Code, to limit the commissioner's discretion in adopting standards to certain, "unbiased" organizations that are nationally-recognized, have publicly-transparent

criteria, and uses risk-adjusted outcomes and an easy-to-use process by which a provider may report errors and have them corrected. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 2067 by Paul (R-Webster): Amends various sections of Chapter 551, Insurance Code, to require an insurer to report to TDI at least quarterly summarizing the insurer's reasons for declination, cancellation, or non renewal to applicants for insurance or policy holders. Requires liability and commercial property insurers to provide a written statement of the reasons for declining an insurance policy (current law requires a statement only if requested). **Signed by Governor on 6/20. Effective 9/1/25.**

HB 2213 by A. Johnson (D-Houston): Amends § 2210.102(d), Insurance Code, to require insurer representatives on the TWIA board to reside in Texas. Requires at least one member to be a property and casualty agent actively offering or selling Texas windstorm and hail policies in the state. Requires three members of the TWIA board to reside outside a catastrophe area (current requirement is more than 100 miles from the Texas coastline). **Signed by Governor on 6/20. Effective 9/1/25.**

HB 2221 by Hull (R-Houston): Adds Chapter 1702, Insurance Code, to establish uniform standards for prohibited practices of life insurance, annuity contracts, accident and health insurance, and health care plans. Provides that a cost to an insurer, HMO, or agent of a loss-control or value-added product or service to an insured must be reasonable in comparison to the premiums or coverage for the class of the insured's, annuitant's, or enrollees policy or contract. Requires an insurer, HMO, or agent that provides a loss-control or value-added product or service to assure that the insured, annuitant, or enrollee is provided with contact information for purposes of assistance. Requires the insurer, HMO, or agent to base the availability of a loss-control or value-added product or service

on objective criteria, offer the service or product on a basis that is unfairly discriminatory, and maintain documented criteria and produce the criteria at TDI's request. Prohibits an insurer, HMO, or agent from offering or providing insurance, annuity, or health care plan coverage as an inducement to purchase another policy or contract or to use the words "free" or "no-cost" (or words of similar meaning) in an advertisement. Bars non-cash gifts, items, or services, including meals, to or charitable donations on behalf of a consumer under certain conditions. Bars raffles or drawings under certain conditions. Bars a life or annuity insurer from offering certain consumer inducements, such as rebates, special favors or advantage in dividends or other benefits, stocks, bonds, other securities, dividends, or anything of value not specified in the contract. Bars an insurer from permitting an agent, officer, or employee from offering certain inducements, such as stock, benefit certificates or shares, securities, or special contracts promising returns or profits. Bars unfair distinctions or discrimination between individuals of the same class and life expectancy regarding rates, benefits, dividends, or any other contract benefit. Prescribes parallel prohibitions for accident and health coverage. Permits an accident and health insurer to HMO to offer certain benefits to an insured or enrollee who participates in programs promoting disease prevention, wellness, or health. **Signed by Governor on 6/20. Effective 9/1/25.**

SB 1644 by Schwertner (R-Georgetown): Adds § 559.058, Insurance Code, to require an insurer that uses credit scoring to use a consumer report issued not more than 90 days before the policy is first issued or renewed and to reassess the insured's policy rating at least every 3 years. Requires the insurer, at the request of an insured, to re-underwrite and re-rate the policy based on a current credit report or insurance score not exceeding once each 12-month period. Allows an insured to opt-out of credit score updates, or the insured is in the most favorably priced tier of the insurer within a group

of affiliated companies, credit scoring is not used in underwriting or rating, or the insured's insurance product or type of coverage does not rely on credit scoring. **Signed by Governor on 6/20. Effective 9/1/25.**

SB 213 by West (D-Dallas): Adds § 551.254, Insurance Code, to make it an unfair or deceptive practice to require a consumer to purchase a personal residential policy contingent on the purchase of a personal automobile policy and vice versa. Bars a person from bringing a private cause of action against an insurer or agent under this section. Enforcement by the attorney general. **Signed by Governor on 6/20. Effective 9/1/25.**

SB 455 by Middleton (R-Galveston)/HB 2275 by Meyer (R-Dallas): Requires a surplus lines insurance contract for a risk located wholly in the state that contains an arbitration agreement to provide that the arbitration will be conducted in Texas and governed by the laws for Texas. Provides further that the insurance contract will be interpreted in accordance with Texas law, unless the insurer and policyholder agree to a different venue and the insurer provides a premium credit to the policyholder for the costs resulting from the change in venue. Permits the insurer and policyholder to agree to a different venue and governance under another state's law for contracts over \$2 million. **Filed without signature on 5/27. Effective 9/1/25.**

SB 458 by Schwertner (R-Georgetown): Adds Chapter 1813, Insurance Code, to require personal auto or residential property insurance policies to include a compliant appraisal provision. Provides that an appraisal conducted under such a provision does not affect other policy terms. Provides that the finding of an appraiser as to the amount of loss is binding on the parties, except for fraud, accident, or material mistake, or an award made without authority. **Signed by Governor on 6/20. Effective 9/1/25.**

SB 493 by Kolkhorst (R-Brenham): Adds, § 1369.803, Insurance Code, to prohibit a PBM from prohibiting or restricting a pharmacist or pharmacy from informing an enrollee of any difference between the enrollee’s out-of-pocket cost for a prescription drug under the plan and the out-of-pocket cost without submitting a claim. Voids a provision in a PBM’s network contract to that effect or preventing or restricting a pharmacist from communicating with plan sponsors or administrators regarding member services. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 138 by Dean (R-Longview): Directs the Center for Health Care Data at UT Health Science Center in Houston to establish the Health Impact, Cost, and Coverage Impact Program to prepare analyses of legislation imposing new mandates on health benefit plan issuers or administrators. Directs the Commissioner of Insurance to issue a special data call for an estimate of administrative expenses related to specific legislation analyzed by the program. Permits the lieutenant governor, speaker, or chair or vice chair of appropriate committees to request an analysis regardless of whether the legislature is in session. Requires the center to report to the lieutenant governor, speaker, or chair of the appropriate committee within a prescribed time period after receiving a request for analysis. **Filed without signature. Effective 9/1/25.**

SB 1236 by Hughes (R-Tyler)/HB 3317 by Hefner (R-Mount Pleasant): Adds § 1369.153, Insurance Code, to require a group number assigned to an enrollee in a plan covered by the statute to be assigned only to enrollees in that plan. Adds § 1369.259(a-1) to prohibit an issuer or PBM from, as the result of an audit, denying or reducing a claim made to a pharmacist or pharmacy except in cases of fraud, where payment has already been made, or where the pharmacist or pharmacy made a substantive non-clerical error or non-recordkeeping error that led to the patient receiving the wrong drug or dosage. Limits the issuer or PBM to recovery

of the dispensing fee, not the cost of the drug or any other amount related to an audited claim. Requires an issuer or PBM to make available to any pharmacy or pharmacist in the network a secure, online portal for access to all pharmacy benefit network contracts. Renders void and unenforceable an adverse material change to a network contract during the term of the contract unless the parties mutually agree to the change (does not apply to a contract with no fixed term or renewal period or a change required by state or federal law). Establishes a procedure for contract modifications that do not involve an adverse material change. Directs an issuer or PBM to make available a provider manual through the online portal. Bars an issuer or PBM from requiring a pharmacist or pharmacy to pay a fee for providing a network contract or a re-credentialing or re-enrollment fee. Bars an issuer or PBM from requiring a pharmacy or pharmacist to participate in a network or otherwise set conditions on participation or impose penalties for refusal to participate. Requires a network contract to include a fee schedule. **Signed by Governor on 5/27. Effective 9/1/25.**

Health Care Liability

HB 216 by Harris Davila (R-Round Rock): Subjects a health care provider to disciplinary action by the appropriate licensing board for failure to mail, e-mail, or provide a physical copy copy of an itemized bill to a patient who has not created a patient profile in a portal used to issue electronic bills. Does not apply to a health care provider who in good faith mails a hard copy of an itemized bill if the copy is returned as undeliverable or lost or the address on file was not current. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 742 by S. Thompson (D-Houston): Requires first responders to complete a training course on identifying, assisting, and reporting victims of human trafficking. Requires posting of signage with specified information in a location easily accessible

to all employees and in various languages. Prohibits a hospital or freestanding emergency medical care facility from retaliating or discriminating against an employee who in good faith reports a suspected act of human trafficking. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 923 by Hernandez (D-Addison): Increases the size of the Texas Medical Disclosure Panel from 9 to 13 members, 3 public members (1 with a background in health literacy), 3 lawyers (at least one of which must have experience representing physicians or providers and one representing patients), and seven licensed physicians. Appointments by the executive commissioner of HHSC. Prohibits the panel from voting on a matter unless the seven physician members are present. Bars the appointment of a registered lobbyist, a health care provider or a provider’s spouse, or a person who works in a health-care related field, including insurance. Specifies that the panel is not authorized to take any action changing the scope of practice of physicians or other providers. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 1612 by Frank (R-Wichita Falls): Requires a hospital to accept direct payment for services from a patient who is not an enrollee in a health insurance program. Limits the amount the hospital can charge to the patient to not more than 25% greater than amounts generally billed for a service or not more than 50% greater than the lowest contracted rate, except for Medicaid, Medicare, and CHIP. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 2038 by Oliverson (R-Cypress): Requires the board to issue an initial provisional license to practice medicine if the licensee meets certain requirements. Bars licensure of a non-citizen or non-legal resident who is a citizen of a country posing a risk to national security (as identified

by the most recent Annual Threat Assessment) or identified as a country subject to prohibitions in the International Traffic in Arms Regulations. Restricts the types of facilities in which a provisional licensee may practice. Requires the holder of a provisional license who meets the standards for renewal to practice in rural, medically underserved, or health professional shortage areas. Establishes a limited license to practice medicine for a physician graduate who works under the supervision of a sponsoring physician. Limits a licensee’s practice to counties with a population less than 100,000 and only in the specialty of the sponsoring physician. Makes the sponsoring physician liable for the physician graduate’s malpractice. Allows an insurer to select a physician graduate. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 2035 by Oliverson (R-Cypress): Requires a chemical dependency treatment facility that refuses to admit a minor for voluntary treatment to provide notice to the parent or guardian requesting admission of their right to seek treatment at another facility. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 2187 by Howard (D-Austin): Adds § 257.006, Health & Safety Code, to prohibit a hospital from retaliating against a nurse who provides information to a nurse staffing committee or reports violations to hospital management or HHSC. Requires HHSC to establish a process to provide prompt review and timely resolution of complaints. Directs HHSC to develop and maintain a website portal by which nurses may report staffing violations, to investigate complaints, and to take appropriate corrective actions. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 2510 by Turner (D-Arlington): Makes it a criminal offense to operate an assisted living facility without a license (Class A misdemeanor; third degree felony for subsequent offense). **Signed by Governor on 6/20. Effective 9/1/25.**

HB 2854 by Anchia (D-Dallas): Grants immunity to a general hospital for damages to a patient or other person resulting from visits of certain parole releasees. Does not apply in cases of gross negligence, recklessness, or intentional misconduct. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 3441 by Luther (R-Tom Bean): Makes a manufacturer liable to an individual for advertising a vaccine in Texas that causes harm or injury to the individual (basically shuts down vaccine advertising). Three-year statute of limitations. Directs the court to award actual damages, costs, and attorney's fees. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 3560 by Pierson (R-Rockwall): Subjects private mental health facilities to regulation of employee misconduct. **Signed by Governor on 5/29. Effective date 9/1/25.**

HB 3595 by Barry (R-Pearland): Requires assisted living facilities adopt emergency preparedness and contingency operations plans. Requires facilities to designate a climate-controlled place of refuge for residents during a power outage or other emergency. Requires installation of backup generation. Ties into existing penalties. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 3749 by Orr (R-Hillsboro): Adds Chapter 172, Occupations Code, to regulate the the provision of elective intravenous therapy. **Signed by Governor on 6/20. Effective 9/1/25.**

SB 2167 by Paxton (R-McKinney): Amends § 455.206, Occupations Code, to subject massage schools the licensing requirements for massage establishments, requiring new licenses if they change location. Authorizes TDLR to delay approval or denial of a license if the commissioner has reasonable cause to believe that a criminal offense is being or is likely to be committed at the

location or was committed at an establishment or school owned or operated by the applicant. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 4076 by Leach (R-Plano): Prohibits a health care provider from determining an individual's eligibility for an organ transplant, denying services related to a transplant, refusing to refer for a transplant, or refusing to place on an organ transplant waiting list, on the basis of vaccination status. Prohibits a person from taking an adverse action or impose a penalty against a provider based solely on the fact that the provider complied with the statute. Provides that a physician who makes a good faith determination that an individual's vaccination status is medically significant does not violate the statute. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 4224 by Hull (R-Houston): Requires a covered entity to prominently post on its website and at any facility detailed instructions for a consumer to request health records, contact the disciplinary or licensing authority for the entity, and file a consumer complaint. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 4454 by Vo (D-Houston): Establishes a task force to study and make recommendations on preventing misconduct in patient solicitation. Adds chemical dependency facilities to the regulation of patient solicitation. Prohibits a treatment facility from contracting with a marketing provider for referrals through a call center or website, unless disclosed to a prospective patient. Prohibits false or misleading statements or information about the facility's services or location in the facility's advertising media or on its website or providing a link on the website redirecting the user to another site containing false or misleading statements. Raises the civil penalty to a maximum of \$2,000. Creates a criminal offense. **Filed without signature. Effective 9/1/25.**

SB 761 by Hinojosa (D-McAllen): Requires a health care facility that is required to offer a victim the opportunity to have an advocate from a sexual assault program to be present during a medical forensic examination to document whether it extended the offer to the victim, whether an advocate was available at the time of the examination, and, if the offer was not extended, the reason therefor. **Signed by Governor on 5/27. Effective 9/1/25.**

SB 842 by Schwertner (R-Georgetown): Provides immunity for a ringside physician at a combative sports event. Does not apply to the physician’s gross negligence. **Signed by Governor on 5/24. Effective 9/1/25.**

SB 916 by Zaffirini (D-Laredo): Amends § 773.061, Health & Safety Code, to give the DHS the authority to revoke, suspend, or refuse to renew a license or certificate of an emergency services provider for violations of statutory billing requirements. Authorizes a political subdivision to annually adjust rates submitted by EMS providers by not more than the lesser of the Medicare Ambulance Inflation Factor or 10% of the provider’s prior year rates (expires 9/1/27). **Signed by Governor on 6/20. Effective 9/1/25.**

SB 1038 by Sparks (R-Midland): Broadens the Medicaid qui tam statute by allowing a bounty hunter up to 5% of any remedy recovered by HHSC (current law limited to administrative penalty). Eliminates the requirement that proof of specific intent be shown in a civil or administrative action for Medicaid fraud. Lowers the threshold for a “knowing” violation of the statute to three elements: (1) knowledge of the information; (2) conscious indifference to the truth or falsity of the information; and (3) reckless disregard (current standard is presenting to the commission information a person knows or should know is false). Broadens the definition of a “violation” to reflect the lower standard of “knowingly” and to include a false statement, misrepresentation, or omission of material information (current standard is presenting

to the commission information a person knows or should know is false). Adds ten more violations to the statute, including new violations by hospitals, hospices, and nursing homes of all types. Raises maximum amount of administrative penalty to the maximum dollar amount allowable by federal law if that amount exceeds the current caps and provides that each day of a violation is a separate violation. **SB 1308 signed by Governor on 5/13. Effective 9/1/25.**

Tort Liability

SB 29 by Hughes (R-Tyler):

- Amends § 1.002(55-a), BOC, to define a “national stock exchange” to include a Texas stock exchange approved by the securities commissioner.
- Adds § 1.056, BOC, to provide that a decision by a corporate manager to disregard other state laws or judicial decisions does not constitute or imply a breach of the statute or any duty existing under Texas law.
- Amends § 2.115(b), BOC, to permit corporate documents to specify that Texas courts shall serve as the exclusive forum and venue for internal entity claims.
- Adds § 2.116, BOC, to allow the governing documents of a domestic entity to contain an enforceable waiver of the right to a jury trial concerning any internal entity claim.
- Amends § 21.218, BOC, to exclude from corporate records that may be demanded by shareholders “e-mails, text messages or similar electronic communications, or information from social media counts unless a particular e-mail, communication, or social media information effectuates an action by the corporation” (applies only to a corporation with a class or series of voting shares listed on a national exchange or that has made an affirmative election to be governed by § 21.419).
- Adds § 21.218(b-2), BOC, to provide that a

written demand is not for a proper purpose if it is in connection with an active or pending derivative proceeding under Subchapter L or an active or pending civil lawsuit to which the corporation or its affiliate and the holder or holder's affiliate are expected to be adversarial named parties.

- Amends § 21.364, BOC,, to permit the holders of a majority of the corporation's stock entitled to vote to approve an increase or decrease of the number of authorized shares in any class or series (if permitted by the certificate of formation or a prior amendment to the certificate).
- Adds § 21.364(e-1), BOC, to provide that shares of a class or series that do not have the right to vote under the certificate of formation shall be treated as having no votes in a vote required by § 21.364(d) if the certificate provides that the vote must be as a single class.
- Amends § 21.365(b), BOC, to allow a certificate of formation to provide that all classes or a series of stock shall only be entitled to vote as a single class or series for the purpose of approving any matter.
- Adds § 21.416(g), BOC, to authorize the board of directors of a corporation with voting shares listed on a national exchange or that has made an affirmative election under § 21.419 to adopt resolutions that authorize the formation of a committee of independent and disinterested directors to review and approve transactions.
- Adds § 21.4161, BOC, to authorize a corporation to petition the business court or, if the corporation's principal place of business is not located in a county included in an operating division of the business court, a district court to hold an evidentiary hearing to determine whether the directors appointed to the committee are independent and disinterested (specifies notice requirements).
- Requires the court to hold a preliminary hearing within 10 days after notice to shareholders to determine appropriate legal counsel and to hold the substantive hearing promptly.
- Provides that a court's determination that the directors are independent and disinterested is dispositive in the absence of facts, not presented to the court, constituting evidence sufficient to prove otherwise with respect to a particular transaction.
- Adds § 21.418(f), BOC, to provide that neither the corporation or shareholders have a cause of action against any director or officer for breach of duty unless permitted by § 21.419 (applies only to a corporation with shares listed on a national exchange of that has made an election to be governed by § 21.419).
- Adds § 21.419, BOC, to establish a presumption that directors and officers act in good faith, on an informed basis, in furtherance of the interests of the corporation, and in obedience to the law and the corporation's governing document.
- Limits a cause of action by the corporation or shareholders for an act or omission of an officer or director to a claim that rebuts the elements of the presumption and proves that the actor omission constituted a breach of duty and the breach involved fraud, intentional misconduct, an ultra vires act, or a knowing violation of law.
- Amends § 21.551(2), BOC, the definition of "shareholder," to include "two or more shareholders acting in concert under an informal or formal agreement or understanding with respect to the derivative proceeding."
- Amends § 21.552(a), BOC, in the case of a corporation with common shares listed on a national exchange or one that has elected to be governed by § 21.419 and has 500 or

more shareholders at the time the derivative proceeding is instituted, to require the shareholder instituting the proceeding to beneficially own a number of the common shares sufficient to meet the required ownership threshold, provided that it does not exceed 3% of the outstanding shares of the corporation.

- Amends § 21.554, BOC, to provide that in a shareholder derivative action the corporation may petition the court to request a determination of whether the directors are independent or disinterested with respect to the allegations.
- Requires the petition to be filed in the court in which the derivative action was instituted, but if no proceeding has been instituted, the petition must be filed in a business court (unless the corporation’s principal place of business is not located in a county outside an operating division of the court, when it must be filed in a district court of the county in which the principal place of business is located).
- Requires an evidentiary hearing on the petition on or before the 45th day after the date of filing (unless extended for good cause).
- Requires a shareholder not already a party to the action to intervene not later than the 7th day after hearing.
- Requires the court to sign an order stating whether the directors are independent and disinterested not later than the 75th day after the petition is filed (unless extended for good cause).
- Provides that the court’s determination is dispositive in the absence of the discovery of facts not presented in court that constitutes sufficient evidence to prove that a director is not independent and disinterested.
- Amends § 21.561, BOC, to provide that a substantial benefit to the corporation

does not include additional or amended disclosures made to the shareholders, regardless of materiality.

- Adds § 101.256, BOC, to apply the same presumptions of good faith and compliance and limitations on liability to limited liability companies with a class or series of voting shares listed on a national exchange.
- Adds § 152.006, BOC, to apply the same presumptions of good faith and compliance and limitation on liability to partnerships with a class or series of partnership interests listed on a national exchange.
- Makes other conforming changes with respect to limited liability companies and partnerships.

Signed by Governor on 5/14. Immediate effect.

SB 823 by Middleton (R-Galveston): Prohibits a person from selling shrimp without a label that conspicuously states whether the product was originated in Texas. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 49 by Darby (R-San Angelo)/SB 1399 by Perry (R-Lubbock):

- Amends § 122.003, Natural Resources Code, to specify that a person, including a surface owner, who takes possession of fluid oil and gas waste for treatment and “either puts the treated product to a beneficial use” or transfers it to another person with a contractual understanding that it will be put to a beneficial use is not liable in tort for a consequence of subsequent use of the treated waste by any person (i.e., expands current law immunity).
- Provides additional immunity from liability to a person, including a surface owner, who produces fluid oil and gas waste or supplies or conveys such waste to a treatment facility for the purpose of generating treating waste from a consequence of the subsequent treatment, subsequent use of treated waste,

or exposure to any component of the treated waste or a byproduct of the process used to generate treated waste.

- Immunizes from liability a surface owner of real property on or under which waste is produced, conveyed, transported, or treated by others for personal injury, death, or property damage arising from exposure to the waste or a byproduct of waste treatment.
- Provides no liability protection from a person’s gross negligence or intentional, wrongful act or omission, or the person’s negligence, if the person did not comply with RRC rules, a TCEQ-issued TPDES permit, or an RRC permit.
- Does not affect existing common law, statutory, regulatory, or other legal liability of a producer or subsequent transferee of waste to the surface owner and any owner of an interest in the surface on or under which waste is produced, transported, or treated.
- Bars an award of punitive damages to a claimant awarded damages for a tort premised solely on the person’s negligence and regulatory nonconformity.
- Amends § 122.004(a) to clarify the RRC’s rulemaking authority with respect to treated waste and any byproduct of a process used to generate treated waste.

Signed by Governor on 6/20. Effective 9/1/25.

HB 1130 by Isaac (R-Dripping Springs): Adds Chapter 75C, CPRC, to limit the liability of a cavern operator if the operator posts a prescribed warning at the cavern entrance. Does not limit liability for injury proximately caused by: (1) the operator’s negligence with regard to the safety of the cavern area of a cavern activity participant; (2) a potentially dangerous condition in the cavern area of which the operator has knowledge or should have knowledge; (3) negligent training of an employee actively involved in the cavern area or

a cavern activity; or (4) the operator’s intentional conduct. **Signed by Governor on 5/29. Effective date 5/29,25.**

SB 1145 by Birdwell (R-Granbury): Directs the RRC to adopt rules and orders and issue permits relating to the recycling and beneficial use of produced water associated with oil and gas operations, taking into account the need to protect public health and the environment. Amends § 26.131(d), Water Code, to require the RRC to provide assistance to an applicant for a permit for the discharge of produced water. SB 1145 direct the TCEQ to issue permits and specifies permitting of land application of produced water. **Signed by Governor on 5/13. Effective 9/1/25.**

HB 145 by King (R-Canadian): Allows an electric utility to self-insure liability for wildfire and potential damages resulting from personal injury or property damages caused by wildfire. Directs the PUC to approve a self-insurance plan (in addition to existing requirements), if commercial insurance alone is not sufficient to cover potential liability or the utility cannot obtain commercial insurance for a reasonable premium. Requires a utility to implement a plan and imposes administrative penalties for failure to comply. Requires the PUC to prioritize consideration of potential extent of wildfire losses based on historical data, actuarial studies, and the possibility of the utility’s exposure from multiple types of disasters occurring in the utility’s service area. Does not permit self-insurance for intentional or reckless conduct or gross negligence. Immunizes an electric utility from damages resulting from a wildfire if the utility has filed and the PUC has approved a wildfire mitigation plan. Does not apply to reckless or intentional conduct or gross negligence. Provides that a utility is not liable for damages resulting from a wildfire if the trier of fact finds: (1) the utility submitted, obtained PUC approval of, and implemented a plan; (2) was in compliance with relevant measures of the plan with

respect to the specific equipment found to have ignited or propagated the fire; and did not cause the wildfire intentionally, recklessly, or negligently. Allows the trier of fact to consider relevant factors contributing to wildfire ignition or propagation to the extent the mitigation plan approved by the PUC departed from nationally accepted safety standards at the time of approval. **Signed by Governor on 6/20. Effective immediately.**

HB 3619 by Dean (R-Longview): Amends § 89.403, Natural Resources Code, to direct the RRC to restore the surface if it plugs or replugs a well, unless the landowner declines. Amends § 89.004 to bar a person authorized to enter land from taking an action preventing the surface owner from accessing it, except as necessary to prevent injury to public health. Adds § 89.05, Natural Resources Code, to shield a surface owner from liability for damages resulting from acts or omissions by the RRC, an RRC agent or employee, or any other person authorized to enter the land to plug or replug a well. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 4157 by Bonnen (R-Friendswood): Adds § 100A.005, CPRC, to allow parties engaged in space flight activities, including contractors, subcontractors, or customers of a party, to execute an enforceable reciprocal waiver of claims. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 4687 by Gervin-Hawkins (D-San Antonio): Extends the same immunity from liability and suit as a school district trustee to a member of the governing body of a campus or program and to the employees and volunteers of an adult education program. **Signed by Governor on 6/20. Effective 6/20/25.**

HB 5624 by Buckley (R-Salado): Adds Chapter 75E, CPRC, to limit liability of a motorized off-road vehicle entity for a motorized off-road vehicle activity participant injury, if at the time of the injury

the entity gave the statutorily prescribed warning. Does not limit liability for gross negligence or intentional misconduct or for negligence regarding safety of the area, the participant, or the vehicle or equipment, for a potentially dangerous condition at the area (other than inherent dangers of which the participant knew or should have known were dangerous), or for the entity’s failure to train or improper training of an employee actively involved in the vehicle area or activity. Does not limit liability for intentional conduct. Provides that the doctrine of attractive nuisance does not apply to a claim. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 4904 by Guillen (R-Rio Grande City): Shields the owner of property on which instruction on motorcycle operation and safety by an instructor or an instructor training course from liability for an act or omission that occurs during the course. Excludes gross negligence, recklessness or intentional misconduct. **Signed by Governor on 6/20. Effective 9/1/25.**

SB 920 by Sparks (R-Midland): Amends § 22.052. Education Code, to expand immunity from civil liability or administrative disciplinary action to an open enrollment charter school or private school that adopts a policy governing the administrative of medication to students that complies with certain statutory requirements. Authorizes the school to allow an employee, including a nurse, to administer nonprescription medication or medication without further authorization under certain circumstances. **Signed by Governor on 5/30. Effective date 9/1/25.**

SB 1057 by Parker (R-Flower Mound): Adds § 21.373, Business Organizations Code, to permit a nationally listed corporation to opt in to a requirement that a shareholder or group of shareholders, to submit a matter for approval at a shareholders meeting, hold no less than the

lesser of: (1) \$1 million in market value of the corporation’s securities; or (2) three percent of the corporation’s securities entitled to vote on the proposal. Further requires that the shareholder or shareholder group have continuously maintained that level of ownership for the six months prior to making the proposal to solicit the holders of shares representing at least 67% of the voting power of shares entitled to vote on the proposal. **SB 1057 signed by Governor on 5/19. Effective 9/1/25.**

SB 1119 by Hughes (R-Tyler): Limits the liability of a water park if the park posts a prescribed warning of the liability limitation. Preserves liability for injury caused by the park’s negligence, premises liability, failure to train, or intentional acts. **Signed by Governor on 5/21. Effective 5/21/25.**

SB 1146 by Birdwell (R-Granbury): Amends § 89.045, Natural Resources Code, to expand liability protection for plugging or replugging a well to include a private person who has paid money to the RRC to plug or replug a well under § 89.084. Adds § 89.049 to authorize an operator in good standing to contract with an RRC-approved well plugger to plug or replug an orphan well. Provides that an operator who enters into such a contract does not assume responsibility for the physical operation and control of the orphaned well (the well plugger does) and is not liable for damages that may result from acts or omissions in plugging or replugging the well. Provides that a person who pays money to the RRC or contracts with a well plugger does not admit responsibility for plugging or replugging the well and evidence of such payment or contract is not admissible in a suit in which a person’s obligation to plug or replug a well is an issue. Provides that introducing such evidence is grounds for a compulsory mistrial. **Signed by Governor on 5/28. Effective 9/1/25.**

SB 1198 by Birdwell (R-Granbury): Amends § 424.001, Government Code, to add spaceports to the definition of “critical infrastructure” for

purposes of civil and criminal liability. **Signed by Governor on 6/20. Effective 9/1/25.**

SB 1283 by Parker (R-Flower Mound): Grants immunity from civil or criminal liability to a senior retirement community that conducts a criminal background check of every employee and maintains a resident safety and communications policy regarding criminal activity that poses a risk to residents. Prohibits a senior retirement community from preventing or inhibiting a resident or penalizing a resident for communicating with law enforcement, family, a social worker, or other interested person regarding safety and security. Prohibits interference with a law enforcement or court officer entering a common area to conduct a voluntary interview with a resident. **Signed by Governor on 6/20. Effective 9/1/25.**

SB 1558 by Perry (R-Lubbock): Immunizes from civil liability under Chapter 84, CPRC, a charitable organization that contracts with DFPS or with a single source continuum contractor if the organization is in good standing with the department and has complied with required criminal background checks and provides required training and reporting. Imposes vicarious liability on an organization not in substantial compliance if plaintiff shows: (1) the failure to substantially comply was a substantial factor in causing the actual harm; (2) the requirement with which the entity failed to substantially comply was designed to prevent the specific type of harm that occurred. Does not apply to gross negligence. **Signed by Governor on 6/20. Effective 9/1/25.**

SB 2807 by Hagenbuch (R-Denton): Prohibits a state agency from discriminating against a person operating an automated motor vehicle or an automated motor vehicle relative to other types of motor vehicles or with respect to road usage. Regulates automated motor vehicles and motor vehicles equipped with an automated driving system. Requires a person to comply with specified

requirements in order to operate an automated motor vehicle for transporting passengers or property in furtherance of a commercial enterprise. Applies commercial motor vehicle laws to automated vehicles. Establishes an enforcement mechanism and hearing process. Provides that the deployment, implementation, or use of a motor carrier safety improvement by or as required by a motor carrier or related entity, including though contract, may not be considered when determining whether the operator of a motor vehicle is an employee or joint employee of the motor carrier or an independent contractor for purposes of state law. Provides that an automated motor vehicle is considered a transportation network company driver for purposes of insurance coverage requirements. Regulates entities that, for compensation, enable a passenger to prearrange a ride in an automated motor vehicle through the entity’s digital network as transportation network companies. **Signed by Governor on 6/20. Effective 9/1/25.**

Construction Law

HB 1922 by Dean (R-Kilgore): Adds § 2272.010, Government Code, to provide that a cause of action by a governmental entity against a contractor for an alleged construction defect in a public work or building accrues when the report required by § 2272.003 as a prerequisite to the action is postmarked. Does not alter the accrual date of the cause of action for purposes of insurance coverage or the statute of limitations or repose. **Signed by Governor on 6/20. Effective 9/1/25.**

SB 687 by Hughes (R-Tyler): Amends § 130.001, CPRC, to add land surveyors to the definition of “construction contract.” Amends § 130.002 to include land surveyors in the anti-indemnity provision that applies to licensed architects and engineers. Amends § 130.0021 to add land surveyors to the standard of care provision for licensed architects and engineers. Makes a

conforming change to §§ 130.004(b) and 130.005 to include land surveyors. Makes parallel changes to § 271.904, Local Government Code. **Signed by Governor on 6/20. Effective 9/1/25.**

HB 2960 by Hayes (R-Denton): Amends § 272.001(b), Business & Commerce Code, to make choice of law provisions in construction contracts void if they specify the application of the law of another state (current law makes such provisions voidable). Requires an action to be brought in the county in which the property that is the subject of the action is located. **Signed by Governor on 6/20. Effective 9/1/25.**

SB 841 by Hughes (R-Tyler): Adds § 162.0031, Property Code, to allow a beneficiary of trust funds paid or received in connection with an improvement of real property to be assigned if: (1) the assignment is in writing not earlier than the date the assignee has paid the beneficiary in good and sufficient funds for the assignment; (2) the assignment is not made part of the construction contract; (3) the assignee is a beneficiary, trustee, or property owner under the construction contract; and (4) written notice of the assignment is provided to the propertyowner and contractor on the project not later than the seventh day after the date the assignment was made. **Signed by Governor on 6/20. Effective 9/1/25.**



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By: Catrina L. Guerrero
Nye Law Office, PLLC

JUST BECAUSE YOU DID IT DOESN'T MEAN YOU'RE NEGLIGENT: Defending & Crafting a Record for Appeal in Clear Liability Cases

In auto accident litigation, few things shake a defense like a client admitting, “I’m 100% at fault for the wreck.” It is an utterance that no prep session can fully inoculate against—it slips out in depositions, on the stand, or even at the scene. Then, plaintiffs rush to capitalize, pushing for summary judgment, directed verdicts, or JNOV, convinced that negligence has been conclusively established.

However, Texas law says otherwise. As defense counsel, your job is to make sure the record reflects that fault does not equal negligence.

Sometimes Clients Crack – And That’s Okay

No matter how well you prep your client, sometimes they crack under pressure. They say the words you hoped never to hear: “*I’m 100% at fault.*” In some cases—it is what it is; you cannot un-ring the bell.

Here is the key: if you have laid down the right testimony, if you have built in just enough context, then even after that admission, the jury can return a verdict that finds no negligence—or finds negligence, but awards only minimal damages. If they do, you can preserve that win on appeal.

We have all seen it—plaintiffs who ignore reasonable settlement offers, roll the dice at trial, and do not get the jackpot they were banking on.

When the Jury Speaks – And Plaintiffs Want a Do-Over

After a jury delivers a favorable verdict—say, no negligence or nominal past medicals—plaintiffs often turn to their attorneys and ask,

“*Now what?*”

The answer? A motion for JNOV or a motion for new trial. Plaintiffs will argue that your client’s admission of fault established negligence as a matter of law. Wrong. Fault is not negligence. As the courts have repeatedly held:

“Car accidents can happen without the negligence of any party.”

Plaintiffs Must Still Prove Their Case

Even with a defendant’s admission, plaintiffs bear the full burden of proof. They must show:

1. A specific **act of negligence** (e.g., speeding, unsafe lane change, distracted driving), and
2. That the act was the **proximate cause** of their injuries—not just that they sought treatment.

It is not enough that your client caused the accident. A plaintiff must still prove that your client failed to act like an ordinary prudent person under the same or similar circumstances. If there is *any* evidence that your client was acting reasonably—that he was attentive, driving safely, or responding to a sudden situation—then negligence must go to the jury.

Summary Judgment or Directed Verdict? Not So Fast!

Let’s be clear: neither summary judgment nor a directed verdict is proper just because a defendant admits fault. If there is anything in the record showing the defendant acted as a reasonably prudent person would, the question of negligence must go to the jury.

Even in rear-end collisions or failure-to-yield cases, Texas law does not presume negligence. It is okay to accept responsibility for causing a crash. However,

if your client was driving cautiously, obeying traffic laws, or reacting to unexpected conditions, that does not constitute negligence as a matter of law.

“[A] driver’s admission of fault or responsibility for a wreck does not establish the driver’s negligence as a matter of law, even when the driver has acknowledged that there may have been a more reasonable or prudent course of action to have taken than the one the driver ultimately took.”

This distinction is the lifeblood of a clear liability defense.

Judicial vs. Quasi-Admissions: The Trap Plaintiffs Set

Plaintiffs will often argue that such admissions—“I’m 100% at fault”—are judicial admissions that bind the defense. Most of the time, they are wrong.

Texas law recognizes quasi-admissions: informal, often testimonial statements inconsistent with a party’s position. These are not binding, they are just some evidence-to be weighed by the jury.

An admission only becomes a judicial admission if it meets all of the following requirements: Made during the judicial proceeding,

1. Clearly contrary to the party’s defense,
2. Deliberate, clear, and unequivocal,
3. Consistent with public policy,
4. Not destructive to the opposing party’s recovery theory.

Even then, the admission must go uncontradicted. If other evidence is introduced without objection, the judicial admission is waived.

“Admissions that might appear to be judicial admissions must be read, not in isolation, but in context of the witness’s entire testimony, which could render the admission a mere quasi-admission that provides some evidence to support the fact associated with the admission, the credibility and weight of which is for the jury to resolve.”

Mitigating Testimony: The Quiet Hero

When defending a case where liability is clear, the testimony matters. Not just what your client says, but how they say it and what else they say.

Mitigating testimony can shift the narrative:

- “I did everything I could to stop.”
- “Traffic stopped suddenly, and I reacted as quickly as I could.”

- “I wasn’t speeding, wasn’t distracted, and believed I had enough room.”
- “I was watching the road and being careful, but the car ahead slammed on the brakes.”

None of this testimony negates fault, but it opens the door to a finding of no negligence or lack of proximate cause.

Even when your client accepts responsibility, if they testify they acted like a safe, attentive driver who made a human mistake or reacted to an unforeseen event, the jury can believe them; the law empowers the jury to do so.

Preserving the Record: Preparing for Appeal

To protect the verdict, defense counsel must: **Highlight** mitigating and context-based testimony,

- **Challenge** the judicial nature of any so-called admission,
- **Insist** on the jury’s role in determining negligence.

When plaintiffs challenge the verdict post-trial, their goal is often strategic: they do not want to retry the case. They want the judge to declare negligence and award damages.

However, under Texas law, to prevail on a JNOV, a plaintiff must:

- Establish that no reasonable juror could have found otherwise, and
- Show the evidence conclusively proves every vital element, including negligence and proximate cause.

If more than a scintilla of evidence supports the jury’s verdict, the motion must be denied. If liability was disputed, a plaintiff cannot get a new trial on damages only.

Conclusion: The Power of “Some Evidence”

In trial, as in life, things go off script. Your client may admit fault. The facts may look bad. The jury may come back with a surprise.

If you have built the right record—if you have shown context, care, and credibility—then even in a “clear liability” case, the jury can find in your favor, and the court must respect that decision.

In Texas, **just because you did it doesn’t mean you were negligent.**



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2025 SPRING MEETING

April 23-27, 2025 – The Brown Hotel – Louisville, Kentucky

The TADC held its 2025 Spring Meeting in the home of the Kentucky Derby, Louisville, Kentucky, at the historic Brown Hotel, from April 23-27, 2025.

Christy Amuny with Germer PLLC in Beaumont and Amy Stewart with the Steward Law Group in Dallas did a masterful job as the Meeting Program Chairs. The program included many great subjects for the practicing trial lawyer including “The 3 Minute Rule for Lawyers: A New Way to Try Cases”. A highlight included a luncheon presentation, “The Law and Lawlessness of Bourbon”.



Arlene Matthews, Mike & Jeni Shipman with Erich Bain



Robert Booth & Sara Martin



Sean Swords, Mike Golemi & Trey Sandoval

2025 SPRING MEETING



Ryan Hart & Russell Smith



Christy Amuny & Amy Prueger



Symeron Rinehart, Kelly Lea with Lana Frazier & David Selbst

2025 SPRING MEETING



Robert Ford



Amy Stewart



Chris Martin



Catrina Guerreo



Jennie Knapp



By: Michelle R. M. Blair and Tyler D. Henkel
Ware, Jackson, Lee, O'Neill, Smith, & Barrow, LLP,
Houston

THE TESTAMENTARY EXCEPTION TO ATTORNEY-CLIENT PRIVILEGE: A Trap for the Unwary and Treasure Trove for the Savvy

There are almost as many types of law practices as there are practicing lawyers, but no matter their practice area, one of the first topics any lawyer is likely to address with a prospective client is the attorney-client privilege. The lawyer will explain that in order to provide effective counsel, they need to be told anything potentially relevant to the representation and that their conversations will be held in the strictest confidence.

The attorney-client privilege is “the oldest and most venerated of the common law privileges of confidential communications,” which the Texas Supreme Court considers “the most sacred” and “essential to the just and orderly operation of our legal system.” *Paxton v. City of Dallas*, 509 S.W.3d 247, 259-60 (Tex. 2017). Its purpose is “to encourage clients to make full disclosure to their attorneys and, in return, to allow clients to obtain full, fair, and candid counsel.” *Id.* at 260.

When discussing the attorney-client privilege with clients, a lawyer is also likely to mention that there are some limited exceptions to their duty of confidentiality. A lawyer, for example, cannot assist a client in committing a crime or perpetrating a fraud and expect to keep those conversations secret. *See* Tex. R. Evid. 503(d)(1). The joint client exception is also commonly known and invoked. *See* Tex. R. Evid. 503(d)(5).

There is another less well-known and rarely examined testamentary exception, however, that could apply in unexpected situations throughout the legal profession. On the one hand, communications presumed to be forever private might one day see the bright light of a courtroom, and attorneys may be required to take the witness stand and describe a former client’s wishes and instructions in intimate detail years or even decades after the representation

ended. On the other hand, properly wielded, the exception presents an avenue to expansive discovery to buttress otherwise difficult to establish defenses and counterclaims such as undue influence, lack of capacity, and fraud.

Despite its name, the testamentary exception is not limited to probate court or communications with estate-planning lawyers. Rather, it may apply to any sort of transaction involving a person who is no longer living, including not only wills and trust agreements, but family partnerships, closely held corporations, property deeds, and settlements of prior disputes. No matter one’s area of practice, therefore, all attorneys would be well advised to familiarize themselves with the scope and possible uses of the testamentary exception to the attorney-client privilege.

Roots of the Testamentary Exception

The testamentary exception to the attorney-client privilege was recognized in English common law and officially adopted by the Supreme Court of the United States in 1897. *Russell v. Jackson* (1852), 9 Hare, 387 (CH); *Glover v. Patten*, 165 U.S. 394, 406-07 (1897). While the attorney-client privilege generally survives the death of a client, the testamentary exception applies only after a client has died. *See Swidler & Berlin v. United States*, 524 U.S. 399, 404-05 (1998). It is premised on the principle of implied waiver and the assumption that clients would want their wishes both known and carried out after their deaths. *Id.* at 405; *Glover*, 165 U.S. at 408. As recently explained by the U.S. Court of Appeals for the Third Circuit:

The logic goes something like this: Take as axiomatic that a testator wants his wishes executed accurately.

Further assume that he discussed those wishes with his attorney while preparing his will. Now imagine that after the testator's death "the truth of his testamentary declaration should be challenged by any of those to whom it related." . . . Who wins in a conflict between the deceased client's interest in confidential communications and his desire that his testamentary intentions be fulfilled? The deceased's intentions, in a rout.

Kyriakopoulos v. Maigetter, 121 F.4th 1017, 1020-21 (3d Cir. 2024).

In practice, however, especially in Texas, the testamentary exception can apply even in situations where the deceased client may not have intended for the privilege to be waived. If the requirements of the rule are otherwise met, for example, the exception will apply "even if the personal representative of the decedent client's estate refuses to waive the privilege." Restatement (Third) of the Law Governing Lawyers § 81, cmt. b (2000).

The Texas Rule

Texas has codified the testamentary exception in Texas Rule of Evidence 503(d)(2), which provides that the privilege does not apply "[i]f the communication is relevant to an issue between parties claiming through the same deceased client." Despite its brevity and long history, the scope of the rule is still largely undefined. See *In re Rittenmeyer*, 558 S.W.3d 789, 793 (Tex. App.—Dallas 2018, orig. proceeding) ("Texas jurisprudence contains scant authority addressing the exception found in rule 503(d)(2)."); *In re Tex. A & M-Corpus Christi Found., Inc.*, 84 S.W.3d 358, 361 (Tex. App.—Corpus Christi 2002, orig. proceeding) ("[W]e have found no cases construing the parameters of this exception.").

Importantly, the privilege remains intact during the client's lifetime, even if the client becomes incapacitated. See, *Suddarth v. Poor*, 546 S.W.2d 138 (Tex. App.—Tyler 1977, writ ref'd n.r.e.) (holding incapacitated plaintiff whose guardian sought to set aside a deed could not be compelled to produce her will); *Krumb v. Porter*, 152 S.W.2d 495, 497 (Tex. App.—San Antonio 1941, writ ref'd) ("[T]he confidence reposed is temporary only and after the death of the testator, the attorney may testify as to any facts affecting the

execution or contents of the will.").

The exception may also only be invoked by parties who have a claim *under* the same deceased client, not third parties asserting claims *against* the client's estate. *Glover*, 165 U.S. at 406. For example, it may be invoked by heirs at law who contest wills that purport to disinherit them and challenge dispositions made to named devisees, but not by creditors or tort claimants who seek to recover funds allegedly owed by the estate. *E.g.*, *Pierce v. Farrar*, 126 S.W. 932, 933 (Tex. App.—Fort Worth 1910, no writ); *Wesp v. Everson*, 33 P.3d 191, 200 (Colo. 2001).

Rule 503(d)(2)'s exception may, however, be asserted defensively against an estate. For example, in one Texas case, an administrator for an estate sued a charitable foundation, contending it had wrongfully induced the decedent to make an inter vivos gift to the foundation at a time when she lacked mental capacity. *In re Texas A & M-Corpus Christi Found., Inc.*, 84 S.W.3d 358, 359 (Tex. App.—Corpus Christi 2002, orig. proceeding). The court of appeals held that the "plain meaning" of Rule 503(d)(2) applied to discovery sought from two of the decedent's former attorneys: one who had assisted with her estate planning and the gift at issue and another who had assisted with a similar gift years earlier. *Id.* at 359-61.

In re Texas A & M demonstrates how defense attorneys may be able to wield the testamentary exception to broaden available discovery whenever a claimant seeks to set aside a transaction involving a deceased party. See also *Hayes v. Pennock*, 192 S.W.2d 169, 173-74 (Tex. App.—Beaumont 1945, writ ref'd n.r.e.) (permitting defendant to invoke testamentary exception in suit by executor to set aside deed). In such cases, the decedent's mental state and intentions are often relevant. This principle is also reflected in the Restatement's version of the rule, which expressly applies not only to issues between parties who claim through the same deceased client by testate or intestate succession but also "by an inter vivos transaction," i.e. a transaction entered with a third party during the decedent's lifetime. Restatement (Third) of the Law Governing Lawyers § 81 (2000).

Relevance

The Texas rule also makes clear that the discovery sought must be relevant to an issue between parties claiming under the same decedent. This means the party seeking discovery is not automatically entitled to a lawyer's entire estate-planning file and must demonstrate the relevance of

all types of information sought. *In re Durbin*, No. 03-16-00583-CV, 2017 WL 2628069, at *4 (Tex. App.—Austin June 16, 2017, orig. proceeding). And when the issue is whether the decedent executed a will after the will sought to be probated, subsequent draft wills that were never executed are not relevant and remain undiscoverable. See *In re Rittenmeyer*, 558 S.W.3d at 794.

In other situations, the lines of relevance may be much less defined. If, for example, a party alleges undue influence in an attempt to invalidate a will or other document executed by the decedent, a lawyer’s knowledge of the decedent’s mental or physical state will likely be discoverable even in the absence of a claim the decedent lacked mental capacity. See, e.g., *Rothermel v. Duncan*, 369 S.W.2d 917, 923 (Tex. 1963) (listing among factors for assessing undue influence “the state of the testator’s mind at the time of execution” and “the testator’s mental or physical incapacity to resist or the susceptibility of the testator’s mind to the type and extent of the influence exerted”).

Broad Application

The testamentary exception is much broader in Texas than in other jurisdictions because it applies to any issue between parties claiming through the same decedent, regardless of whether that issue arises in a probate court or proceeding involving the estate.

Other jurisdictions only apply the exception (1) in a will contest, (2) to communications with the specific attorney who drafted the decedent’s will, and/or (3) to communications that concern the execution or validity of the will itself. E.g., *Gast v. Hall*, 858 N.E.2d 154, 163 (Ind. Ct. App. 2006); *Estate of Queener v. Helton*, 119 S.W.3d 682, 683 (Tenn. Ct. App. 2003); *Wesp v. Everson*, 33 P.3d 191, 200 (Colo. 2001); *Curato v. Brain*, 715 A.2d 631, 636 (R.I. 1998). In those jurisdictions, lawyers who did not participate in drafting the decedent’s will cannot be compelled to disclose their communications even if they have knowledge about the decedent’s mental capacity, testamentary intent, or intent regarding other contractual arrangements. But in Texas, any type of lawyer with such knowledge must be wary of the possibility that the exception will one day be invoked.

Joint Representations and Defenses

There is also some authority for the notion that “the common-legal-interest principle does not

serve to prevent the application of the Rule 502(d) (2) exception when a privileged communication is relevant to an issue between parties claiming through the same deceased client.” *In re Durbin*, No. 03-16-00583-CV, 2017 WL 2628069, at *4 n.4 (Tex. App.—Austin June 16, 2017, no pet.). In other words, if one attorney represented spouses on relevant matters, a surviving spouse may not be able to assert their own privilege to prevent disclosure of communications involving a deceased spouse. That could theoretically happen even if the surviving spouse is a party to the suit in which the communications are sought.

By the same logic that the testamentary exception could reach communications between clients represented by the same attorney, it could also swallow the joint-defense privilege, “which applies when multiple parties to a lawsuit represented by different attorneys communicate among themselves.” *In re JDN Real Estate-McKinney L.P.*, 211 S.W.3d 907, 923 (Tex. App.—Dallas 2006, no pet.); see also Tex. R. Evid. 503(b) (1)(C). That is especially true given that the Texas rule is not confined to will contests and may apply to communications involving family partnerships, closely held corporations, and settlement agreements. For example, attorneys representing multiple defendants in a family partnership dispute are likely to communicate among themselves to present a joint defense. If the attorneys gain knowledge through the joint defense that is relevant to the intentions or capacity of a party who later dies, their own clients may not be able to invoke the attorney-client privilege to prevent communications involving the deceased party’s attorney from disclosure in subsequent litigation.

Conclusion

The testamentary exception in Rule 503(d) (2) to the attorney-client privilege has potentially broad application to communications with unsuspecting attorneys and can rear its head decades after the communications are made. Attorneys should be cautious not only when directly planning a client’s estate but also when negotiating settlement agreements for litigation involving family-owned and closely held companies, trusts that are in any way relevant to an estate plan, or any other contract or transaction involving a party whose capacity or intentions might later be questioned. Defense attorneys, however, should also familiarize themselves with the rule and consider whether it might assist them in defending claims involving questionable transactions with a deceased party.

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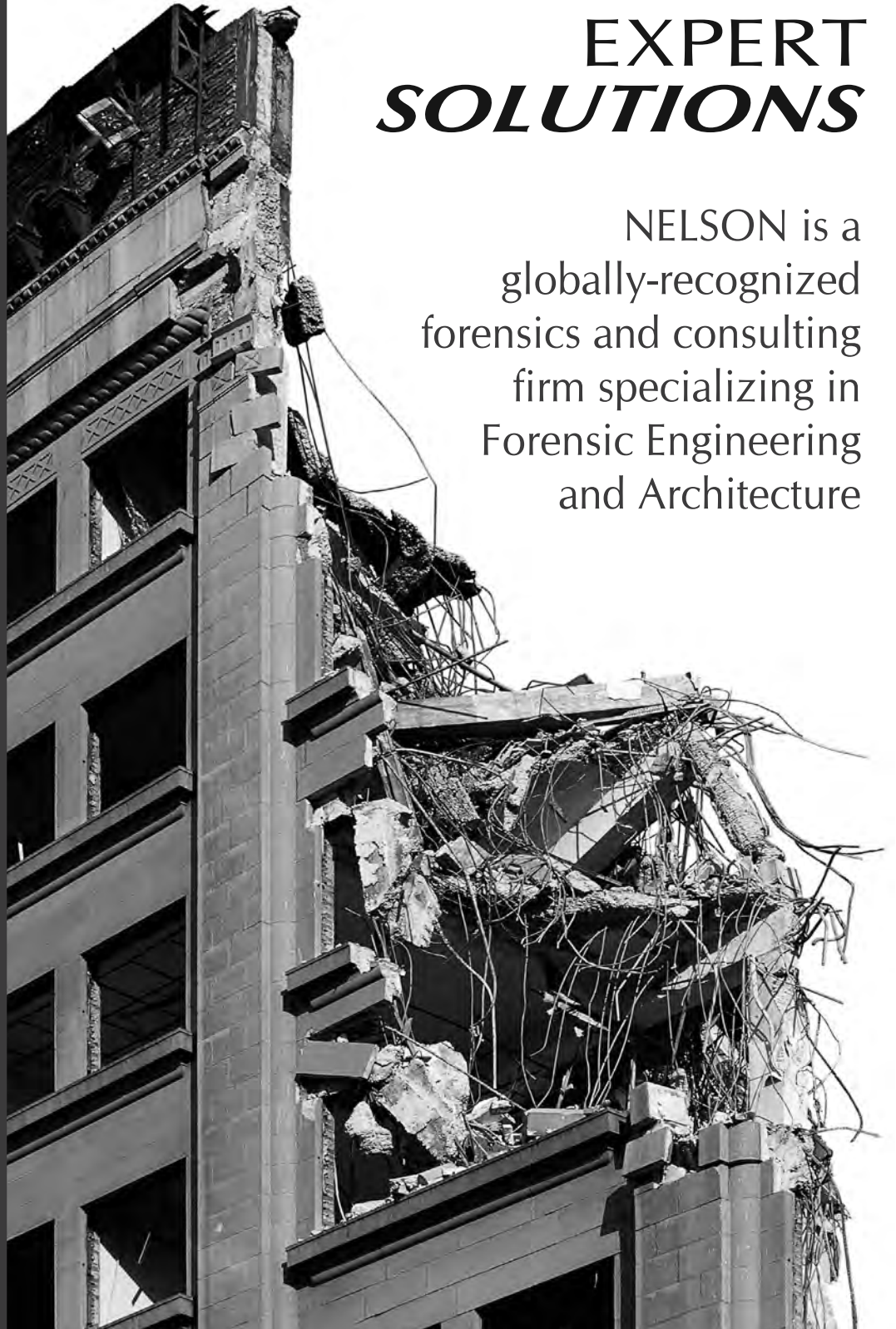
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2025 WINTER SEMINAR

January 29 – February 2, 2025 – Steamboat Grand – Steamboat Springs, CO

The 2025 TADC Winter Seminar was held at the Steamboat Grand in Steamboat Springs, Colorado, January 29-February 2, 2025. Darin Brooks with Grey Reed in Houston and Sean Swords with Chamberlain McHaney in Austin provided a program with practical topics for the practicing litigator. Members enjoyed 11.00 hours of CLE and great skiing!



Russell Smith with Karen Gann



Christy Amuny with Heather & Robert Sonnier



Michele Smith, Brandy Bradley, Eddie Yeagans
with Mike Shipman



Brandy Bradley, Frances Fender, Emma Adamcik
with Jeff Pruett

2025 WINTER SEMINAR



David Selbst, Anna Laura Delgado, Jim Hunter, Victor and Iliana Vicinaiz, Cathy Kyle, Mark Nixon with Denise Selbst



Gina & Reagan Rees with Frances Brooks



By: David Lauritzen

Cotton, Bledsoe, Tighe & Dawson, PC.

Peruse the internet and you can find any number of articles about the importance of attorney-client relationships. While these relationships are of the utmost importance — it’s hard to earn a living as a lawyer without clients — there are a number of other relationships that will make a defense attorney’s practice easier, more successful, and more fulfilling. Such relationships include your interactions with your staff, judges, court staff, and other attorneys.

The Power of Positive Relationships in the Practice of Law

In any profession—whether law, business, healthcare, education, or technology—success is rarely achieved in isolation. While skills, knowledge, and drive are essential, one often-overlooked key to long-term achievement and satisfaction is the quality of our relationships. Positive professional relationships don’t just make our workdays more pleasant—they enhance performance, open doors to opportunity, and help us navigate the complex human dynamics at the heart of every workplace.

One of the clearest benefits of positive relationships is improved communication and collaboration. Whether it’s between colleagues, clients, supervisors, or support staff, trust and respect foster open dialogue, efficient problem-solving, and fewer misunderstandings. In high-stakes environments like law firms, strong

BEYOND THE ATTORNEY-CLIENT RELATIONSHIP

relationships can be the difference between a smooth resolution and a costly conflict.

Relationships also serve as an important support system. The demands placed upon a lawyer’s life are often intense, and the pressures can be isolating. Having trusted peers, mentors, or team members to turn to during challenges not only reduces stress but also helps us maintain perspective, morale, and resilience.

Furthermore, strong interpersonal connections contribute significantly to career growth. Positive relationships with mentors can lead to guidance, advocacy, and professional development. Networking—when based on authenticity rather than self-interest—leads to referrals, partnerships, and new opportunities. Even relationships with “non-traditional” contacts, such as support staff, clients’ assistants, or community contacts, can prove invaluable over time.

Lawyers also benefit personally from investing in workplace relationships. Studies have shown that people who feel connected and respected at work report greater job satisfaction, stronger engagement, and better overall well-being.¹ A healthy professional culture—where people treat each other with dignity and empathy—improves retention, innovation, and even productivity. Importantly, strong relationships enhance a lawyer’s professional reputation. In every industry, reputations are built not just on results, but on how one interacts with others. Being

¹ See, e.g., Epley, N., & Schroeder, J. (2014). Mistakenly seeking solitude. *Journal of Experimental Psychology: General*, 143(5).

known as someone who is respectful, fair, and easy to work with can influence everything from courtroom dynamics to client referrals, and promotion decisions.

Finally, positive relationships enrich the human experience. We spend a significant portion of our lives at work. Cultivating genuine, respectful connections with colleagues, clients, and peers makes that time more meaningful and fulfilling. Professional life is not just about getting results—it's about building trust, adding value, and growing together.

Even if You Are a True Solo, You Have a Staff

Even, if you are truly a solo practitioner, with no receptionist, legal secretary, or paralegal, you will encounter a number of people throughout your career that fill in similar roles. A strong, respectful relationship between a lawyer and staff—including receptionists, paralegals, legal assistants, records clerks, librarians, and even cleaning staff—is foundational to a healthy, productive, and professional law practice. It's all about fostering increased efficiency and productivity. Ultimately, everyone involved benefits.

Paralegals and secretaries who feel valued are more likely to stay ahead of deadlines, spot issues early, and keep files and calendars in top shape. They get callers and inquiries to the right people (not always you), while filtering out the people that you don't need to talk to. Likewise, the folks in the library or the records room ensure that research and import case documents get to you promptly and accurately.

Our building's custodian staff is lucky to have little turnover and a delightful lady named Irma has been in charge of our law firm's floors for well over a decade. She is always in a good mood and speaks at least three languages. Our relationship has been confined largely to elevator rides and waving during after hours in the hallways. I would never have anticipated how helpful she could be—including one evening where she may have saved my job. I was working on a filing that had to be in by midnight and I left

the office in the early evening for a quick dinner. Unfortunately, I left my phone and my security card on my office desk. When I returned to the office, everything was locked and I had no way to get ahold of anyone else in time to get into the office and finish filing. Fortunately, Irma had passed through my office after I left and noticed the security card. When I showed up at the door of my building in an absolute panic, she was there with my card. I had to endure a bit of tut-tutting, but well worth it for the kindness she showed!

Or, looking from the opposite direction, Irma didn't have to go out of her way to help me, but did because I had always been polite to her and she like me for it. Under more ominous circumstances, someone such as Irma, or indeed any of these law firm staff positions, can become a road block of some kind that can put a quick stop to where you and your case need to go. A filing clerk who doesn't know you or doesn't like you can significantly delay the delivery of files because he is "backed up" or the file has been "misplaced." A disgruntled legal secretary or paralegal has a thousand little nitpicks available to make your job difficult. Why get into such a situation when a little mutual respect puts everyone in a better place?

It doesn't take much, but proper acknowledgement of what your staff brings to the table increases morale and job satisfaction. When lawyers treat staff with dignity, it creates a positive work environment, reduces burnout, and increases loyalty. Happy staff (including associates) are more engaged, more careful, and more committed to the team's success. In high-stress situations (e.g. filing deadlines, emergencies), strong relationships mean the team pulls together rather than falls apart.

A smoothly functioning lawyer-staff relationship ultimately results in overall better client service. Receptionists and front-line staff often shape the client's first impression. A motivated, respected staff member is more likely to deliver friendly, professional service. Behind the scenes, smooth collaboration means faster turnaround times and more polished work product.

It is hard to stress enough the importance of institutional history's impact upon a law firm's current culture. Long-term staff often know the firm's systems, clients, and quirks better than anyone. A good relationship ensures that their insight is heard and used. In this respect, records and library staff can be incredible resources for finding obscure documents or research—again as long as there is trust and open communication.

Lawyers who have strong relationships with staff are better able to delegate tasks confidently, freeing up their time for higher-level legal work. In turn, staff feel empowered and trusted, which boosts performance.

Staff who work closely with supportive attorneys often learn and grow into more skilled professionals, creating a stronger legal team overall. It also reflects well on the lawyer as a leader and mentor.

A culture of respect and collaboration, from lawyers to cleaning staff, promotes team cohesion and lowers turnover. It also sets a standard for how everyone should treat each other—clients included.

The Partner-Associate Relationship

The same principles that apply to lawyer staff relationships apply to partners and associates.² A strong relationship between law firm partners and associates is crucial—not just for a healthy work environment, but also for the long-term success of the firm.

Mentoring other one another is of paramount importance. Remember, today's new associate may become tomorrow's managing partner. Defense work demands precision, especially in motion practice, discovery responses, and trial preparation. Good relationships ensure that partners and associates are aligned in strategy and expectations, minimizing errors and boosting the quality of defense. Associates who feel mentored and a part of the team ask better questions and dig deeper—leading to stronger factual and legal

defenses. On the defense side, responsiveness and turnaround times are critical (especially under pressure from clients, courts, or opposing counsel). A strong partner-associate relationship builds trust so partners can confidently delegate, and associates can take ownership of cases while staying aligned with the firm's defense philosophy.

A successful defense practice often involves navigating liability exposure, regulatory nuance, or high-stakes criminal consequences. Again, associates benefit from close guidance to understand not just the law, but the tactical and reputational risks at play. Partners pass down institutional knowledge about judges, opposing counsel, and case nuances that make all the difference in defense work. Further, associates that have had a positive mentoring experience are more likely to emerge as good mentors later on in their careers.

Defense clients—corporate or individual—expect seamless, professional, and unified representation. Partners and associates who work well together project confidence and competence to clients. Associates who understand the client's business or personal risk deeply (thanks to strong partner mentorship) contribute meaningfully to case strategy, which clients notice. Defense firms often handle repeat litigation for corporate clients or long-running criminal matters. Associates who stay with the firm due to strong internal relationships help preserve context, history, and strategy continuity. Long-term associates can grow into “client whisperers” who know both the law and the client's preferences. A well-oiled defense team—where associates are engaged and empowered—reflects positively on the firm's professionalism, attracting both clients and top-tier lateral hires. Judges and opposing counsel also notice cohesive teams, which can improve credibility in court and negotiations.

No Matter Your Practice, You Still Have to Interact with other Attorneys

member, associate, senior associate, of counsel, etc. For simplicity, I will just talk about partners and associates.)

² There exists a veritable plethora of attorney designations—partner, nonequity partner, shareholder,

As I point out above, a good relationship between a lawyer and other lawyers—regardless of their role—offers a range of professional and strategic benefits.

I will admit that being in West Texas gives me an advantage in my relationships with opposing counsel in that we have a relatively small bar. You get to know the bad apples pretty quickly and learn to treat them with caution. Meanwhile, the vast majority of plaintiffs’ counsel out here are people that I know well and respect. Although we may disagree in court on just about everything, we get along and even socialize back in the outside world. Even if we aren’t close outside of the courtroom, there are still tangible benefits to positive relationships with other attorneys.

Having a professional reputation for courteous conduct, even when fighting the other side tooth and nail, builds a strong and respected name in the legal community that will get you started off on the right footing. Being told by a new adversary, “Hey, I called my friend and she said you’re a good egg” is a good way to start a case.³ You know that hostility will be reduced as both sides focus on facts and laws rather than gamesmanship and ad hominem attacks. Communications will be better and it will be easier to reach agreements on deadlines, discovery issues, or procedural matters. Ultimately, your chance of a pretrial resolution goes way up as mutual respect can lead to more productive settlement talks and reduce unnecessary conflict.

“A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.”⁴ In particular, when dealing with opposing counsel do not confuse “zealous advocacy” with boorish or even unethical behavior. It is one thing to understand that, even if your client absolutely blew it and will lose the case 99.9% of the time,

the client still deserves your best efforts to minimize the inevitable results. It is another thing to be in this situation and to try and “win at all costs”—make up facts, intentionally confuse uncontested facts, misrepresent the record, or advance legal theories that you know are wrong.⁵ The latter situation is not advocacy; it is morally unacceptable and unethical. Lawyers who practice this way will not only permanently damage their relationships with opposing counsel, but with other lawyers, judges, staff, and well...pretty much everyone.

For defense attorneys who work with insurance companies, it is not uncommon to have other attorneys involved in a lawsuit that, while not necessarily acting as supervisor, are paying close attention to your performance. Sometimes it’s formal *Cumis* counsel; sometimes it’s an attorney hired by an excess insurer; and sometimes it’s personal counsel hired at the insured’s expense.⁶

Even when not working together formally, you will invariably encounter and influence other lawyers including peers at your workplace, co-counsel, aligned counsel, lawyers you see regularly in the courtroom, and lawyers you meet while volunteering on boards, on committees, and with trade groups. Lawyers often refer cases to peers they trust—even informal relationships can lead to new business. Informal conversations can yield tips, legal strategies, or updates on judges, opponents, new defensive tricks and procedures, new trends from the plaintiff’s bar, or new court decisions.

Law can be isolating—having peers to talk through challenges with helps personally and professionally. Particularly for the solo or small firm practitioner—you don’t always have the option of going next door to ask questions or seek advice. Some of the best mentoring I have received came from legal professionals outside of

³ I’ve never actually heard a lawyer refer to another as a “good egg.” Brad Pitt calls Jonah Hill a “good egg” in the movie *Moneyball*, and I thought it was cool.

⁴ ABA Model Rule of Professional Conduct 1.3, cmt. 1.

⁵ See Texas Disciplinary Rule of Professional Conduct 3.03, “Candor Towards the Tribunal.” See also Rule 3.01, “Meritorious Claims and Contentions” (“A lawyer shall

not bring or defend a proceeding, or assert an issue unless there is a basis in law and fact that is not frivolous”) and Rule 4.01, “Truthfulness in Statements to Others” (“Lawyers must be truthful and not knowingly make false statements of material fact or law to others.”)

⁶ See *San Diego Navy Federal Credit Union, et al. v. Cumis Ins. Society, Inc.*, 162 Cal.App.3d 358 (1984).

my firm, including competitors and opposing counsel.

In short, strong inter-lawyer relationships increase efficiency, reduce friction, enhance learning, and open doors. Even in adversarial settings, professionalism and respect always pay off.

Clerks and the Court Staff

“I do not rule Russia. Ten thousand clerks do.”
— Nicholas II of Russia.

Without intending to compare the America legal system to the waning days of Imperial Russia,, there Tsar Nicholas had quite an insight into the significance of clerks—in our case, district clerks, county clerks, and court coordinators. A good relationship between a lawyer and a judicial clerk can be incredibly beneficial for both parties and can significantly improve the efficiency and effectiveness of legal proceedings. Here are some key benefits:

- **Faster Processing of Documents:** When there is mutual respect and good communication, clerks may prioritize or more efficiently handle filings, especially in time-sensitive cases.
- **Smooth Case Management:** Clerks help manage court schedules, dockets, and records. A cooperative relationship ensures smoother coordination and fewer scheduling conflicts or misunderstandings.
- **Access to Information:** Clerks can be invaluable in guiding lawyers through local procedures, rules, and even unwritten practices, helping attorneys navigate the system more effectively.
- **Fewer Errors:** Clear, respectful communication can help avoid mistakes in filings, fees, and document formatting, reducing the chances of rejected paperwork or delays.

- **Professional Courtesy:** In urgent situations, clerks might be more willing to go the extra mile for a lawyer they trust—such as accepting a late filing or helping track down missing records.
- **Positive Reputation:** A lawyer who maintains respectful and professional relationships with court staff builds a good reputation, which can influence how they’re perceived by judges and other court personnel.
- **Mutual Efficiency:** A good relationship creates a more pleasant working environment for both the lawyer and the clerk, which helps everyone stay productive and reduces unnecessary stress or friction.

By far, the best practical example I can mention is a situation that came up almost twenty years ago when a partner and I spent almost a month trying a contentious personal injury case in a sparsely populated West Texas county. In a very uncommon situation, another group of lawyers was trying a similar case before a visiting judge at the same time, but had started about two weeks earlier. When we got to the District Clerk’s office a couple of days before trial to introduce ourselves, we got quite a chilly reception. Apparently, the first group had been extremely demanding—insisting that the clerk provide copying and fax services both during and after business hours while generally treating the court staff with rudeness and disdain. Eventually the judge got involved and shut down the shenanigans, but not before some strong opinions about visiting lawyers had been formed. As both sides of our trial group treated the Clerk’s staff with respect and flexibility, by a week into trial, the staffers were more than happy to lend us the occasional use of their office equipment and services. Needless to say, that never happened with the other trial group. I still go by to say “hi” to the staff when I’m in that county—it costs nothing but my time and I genuinely like to see everyone and catch up on how they’re doing. My experience with the clerks (and incidentally also

the opposing attorneys who were hard fighters but great people) made an inherently grueling trial a positive, and sometimes pleasant, experience.

It's Different, but You Can also Have a Good Relationship with a Judge

A good relationship between a lawyer and a judge—grounded in professionalism, respect, and integrity—can bring several important benefits, both for the lawyer and the justice system as a whole. In addition to judges specifically, this includes the judge's staff such as briefing clerks, bailiffs, court coordinators, videographers, IT staff, and court reporters.

Courtrooms today are often technological marvels with all kinds of projectors, computer monitors, microphones, sound dampeners, and other multimedia devices. I make it a practice to visit the courtroom at least the week before trial to see what technology is available and what modifications I may have to make to my trial team's presentation because of courtroom configurations or other obstacles. The courtroom staff, and especially the IT specialist are invaluable to communicate what is and what isn't available, as well as the best way to utilize courtroom equipment. They are also a valuable resource for what the judge does and does not like when running the trial. Without the help of these folks, you risk showing up for trial and irritating absolutely everyone because you can't get your fancy tech to work.

Like anyone else, judges are more likely to trust a lawyer who consistently appears prepared, respectful, and ethical. This can lead to greater weight being given to your arguments or representations in court. I don't believe I've ever had a judge rule in my favor just because it's me, but I do believe that in close calls, a judge who knows and trusts me and my firm is more likely to give us the benefit of the doubt.

While judges must remain impartial, a lawyer known for being professional and efficient may receive more leeway with things like:

- Reasonable deadline extensions
- Scheduling accommodations
- Leeway in oral arguments or filings

We have all experienced (or at least heard about) family vacations or other important personal events being cancelled at the last minute because of an unexpected trial or hearing setting. Sometimes, this cannot be helped. However, I can attest that a respected and trusted lawyer will get a lot more flexibility from both the courts and opposing counsel so that these conflicts may be largely avoided.

Judges appreciate lawyers who are organized, concise, and don't waste the courts' time—which contributes to a more favorable dynamic. Judges appreciate lawyers who help move the docket forward efficiently. A good relationship often means fewer unnecessary disputes and less friction, which improves outcomes for everyone involved. Further, court proceedings run more smoothly when there is mutual respect and understanding amongst the lawyers and the court. Jurors in particular appreciate this kind of cooperation. Their time is just as valuable as ours and they appreciate it when it's not wasted.

Finally, some of the best advice I've received as a defense attorney has been from judges. It can be nerve wracking to approach a judge and ask for feedback. But, a judge who respects a lawyer will be more likely to offer feedback (directly or indirectly) to help with professional growth and courtroom strategy. But always remember, the relationship between a lawyer and a judge must always respect boundaries—judicial impartiality is paramount. The goal is mutual professionalism, not favoritism.



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AMICUS CURIAE COMMITTEE UPDATE

Stephen Bosky (Ramon Worthington Nicolas & Cantu) filed an amicus to support the petition for review in *Werner Entr. v. Blake*, 672 S.W.3d 7554 (Tex. App.-Houston [14th Dist.] 2022, pet. granted) (en banc) (Christopher, C.J., dissenting). There are a number of important issues in a highway trucking accident on an icy interstate highway during freezing rain. First, the majority concluded that the truck driver's speed caused the collision when the passenger vehicle lost control on any icy road and crossed a forty-foot wide median into the truck's lane. Plaintiff argued that, had the trucker driven at 15mph instead of 50mph, he could have braked or swerved to avoid collision. Second, stipulating that the truck driver was in scope of his employment did not preclude submitting direct negligence in supervision and training. Third, a *Casteel* objection that the liability question commingled valid with invalid theories was insufficient because the objection failed to specify the invalid theories. The Supreme Court has granted review. Oral argument was December 3, 2024.

An amicus brief was authorized to support Home Depot's petition in *Seward v. Santander*, ___ S.W.3d ___, 2025 Tex. LEXIS 381 (Tex. May 9, 2025). The Dallas Court reversed a summary judgment for defendants; a person detained by an off-duty security guard at Home Depot shot a police officer who came to arrest him. In a nutshell, the Dallas Court decided that Home Depot was negligent in failing to tell the arresting officers that the detainee had not been frisked for a weapon and could be dangerous, and in failing to handcuff him or tell the officers he was not restrained. First, the Court held the security officer was within the scope of his police-officer employment when he detained and searched the customer. There the security guard was entitled to be dismissed under Tex. Civ. Prac. Rem. Code §101.106. Second, the Court adopts the Public Safety Officer Rule limiting the duty owed to officers responding to an emergency. For a premises liability claim, the Rule limits the duty owed to a licensee – to warn of dangerous conditions of which the owner is aware but not the officer. The retailer's adoption of safety policies does not create an independent duty to public safety officers to exercise

care to not create the unsafe condition necessitating the officer's intervention. Here the dangerous condition was the customer's possession of a concealed firearm; neither the Home Depot manager nor the security guards knew he had a gun.

Brandy Manning (Dykema) submitted an amicus to support the mandamus petition in *In re State Farm Mut. Auto. Ins. Co.*, No. 23-0755. This raises several unresolved issues in UM/UIM litigation – staying extra-contractual claims, corporate representative depositions, and restricting discovery of pre-accident medical records. The trial court (1) denied severance and abatement of extra-contractual claims, (2) denied motions to quash corporate representative deposition and deposing the adjuster, and (3) restricted DWQs to post-accident medicals of plaintiff's providers for accident treatment. The Dallas Court of Appeals summarily denied mandamus relief. The Supreme Court heard oral argument in October 3, 2024.

Peter Hansen (Jackson Walker) filed an amicus to support defendants' petition for *Posada v. Lozada*, No. 08-22-0101-CV, 2023 WL 5671449, 2023 Tex. App. LEXIS 7019 (Tex. App.--El Paso Sept. 1, 2023, pet. filed) (mem. op.) (Soto, Jr., dissenting). This is a highway trucking accident between defendants' 18-wheelers and plaintiff's truck; the trial court granted a no-evidence MSJ on breach of standard of care and causation; the court of appeals reversed, with a dissent. This raises the question of whether ending up jack-knifed on the road is some evidence the driver was negligent in reacting to an unexpected tire-blow out. The majority concluded that evidence that Lozada driving his truck somehow resulted in blocking the lanes was "some evidence" of a failure to use ordinary care. The majority does not clarify what was the failure in driving. The dissent argues that merely blocking the highway is not itself evidence of negligence in causing the truck to jack-knife or failure to regain control. This is an important opinion because it arguably requires all jack-knife collisions to go to the jury. Merits briefing is completed and a decision on whether to grant review is expected.

Mike Eady (Thompson Coe) submitted an amicus brief for defendant’s petition for review in *Hyundam Ind. Co. Ltd. v Swacina*, 692 S.W.3d 734 (Tex. App.—Corpus Christi 2023, pet. filed). This is a special appearance in a products liability case by a Korean component part manufacturer; Corpus affirmed the denial finding specific jurisdiction. Applying the stream-of-commerce-plus theory, it decided Hyundam intended to serve a Texas market because it developed the pump to meet North American specifications. Citing *State v. Volkswagen*, 669 SW3d 399 (Tex. 2023), Corpus decided designing the product for use in North America was designing it for use in Texas; it was not necessary that it be particularly designed for Texas. This is a potentially important case in which a component part manufacturer is subject to Texas jurisdiction because the finished product manufacturer designed the product for a “North American” market.” Merits briefs have been requested.

Jennie Knapp (Underwood Law Firm) was authorized to support JMI’S petition in *JMI Contrs., LLC v. Medellin*, 2023 WL 4217036, 2023 Tex. App. LEXIS 4570 (Tex. App. —San Antonio June 28, 2023), *on m/reh/en banc*, 2024 WL 3954210, 2024 Tex. App. LEXIS 6364 (Tex. App.—San Antonio Aug. 28, 2024) (Martinez, J. dissenting). This is a construction accident in which the jury awarded \$3.3 million actual and \$1 million punitive damages. The chief issues are (1) the “necessary use” exception to a premises owner’s legal duty once an adequate warning is given to an independent contractor who knows of an open/obvious risk, (2) sufficiency of gross negligence evidence (3) exclusion of evidence that Medellin has consumed alcohol and marijuana prior to the accident, and (4) incurable jury argument to protect “undocumented workers.” The original panel held exclusion of use of marijuana and alcohol was harmful error; on rehearing, the San Antonio Court en banc held exclusion was not error and affirmed the judgment. On liability, the Court held the “necessary use” exception applied to the duty owed to an invitee, even when invitee is an independent contractor. An adequate warning of the risk and the invitee’s knowledge of an open/obvious risk does not absolve the owner’s duty when (1) the invitee must necessarily use the property and (2) the owner can anticipate the invitee is unable to take measures to avoid the risk. The San Antonio Court the exception should apply to independent contractors because JMI controlled job safety requirements and would not expect the sub to install a warning line. The Supreme Court has requested a response to the petition.

Roger Hughes (Adams & Graham) has been authorized to file and amicus in amicus on *Ortiz v. Nelapatla*, 2023 Tex. App. LEXIS 5216 (Tex. App.—Dallas 7/18/25) (Partida-Kipness, J., dissenting), reh. en banc denied, 675 S.W.3d 259 (Tex. App.—Dallas, pet. granted) (Partida-Kipness, J., dissenting). This case is critical on TCPRC 18.001 medical expense affidavits and undermines the value of filing counteraffidavits. Here plaintiff offered two medical billing affidavits and the counter-affidavits to prove the “uncontested” portion of the bills, arguing that the counteraffidavits effectively admitted part of prices were reasonable. The trial court denied admission and the Dallas court (over dissent) affirmed. The issues are (1) are the affidavits admissible to prove the “uncontested” portion of the amounts billed and (2) are counter-affidavits admissible as statements of a party opponent. TTLA has already filed an amicus. The Supreme Court granted review on April 4, oral argument date to be decided.

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2025 CATCH A CLE WAVE

June 20-22, 2025 – Margaritaville Resort – South Padre Island, TX

The TADC held its first Young Lawyers “Catch a CLE Wave” Seminar in South Padre Island on June 20-23, 2025. Jim Hunter with Royston, Rayzor in Brownsville and Sean Swords with Chamberlain McHaney in Austin Co-Chaired this successful event. Topics were designed with young lawyers in mind and ranged from Depositions to Discovery. Look for this event to happen again in the future!



Full House!!



Eddie Sikes



Shauna Lozano

2025 CATCH A CLE WAVE



Dilcia Jones & Gayla Corley



The Honorable Adolfo Cordova & Ricardo Adobatti



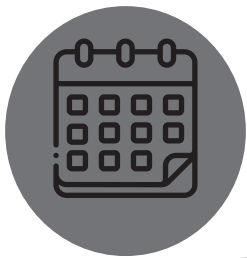
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Mrs.

I Ms. _____ hereby apply for membership in the Association and certify that I am
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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.

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July 15, 2025

TO: Members of TADC

FROM: Mike Shipman, TADC President
Gayla Corley, Nominating Committee Chair

RE: Nominations of Officers & Directors for 2025-2026

OFFICES TO BE FILLED:

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

Nominating Committee Meeting – August 1, 2025

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

Gayla Corley
MehaffyWeber, PC
4040 Broadway St., Ste. 522, San Antonio, TX 78209
PH: 210/824-0009 FX: 210/824-9429
gaylacorley@mehaffyweber.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 |



By: Judge Mark Davidson

MDL Civil Court, Houston

TWELVE THINGS ABOUT THE STOWERS CASE YOU DIDN'T KNOW!

All readers of this journal are familiar with the case of *Stowers Furniture Company v. American Indemnity Company*, a 1929 case that established in Texas law the duty of insurance companies to use ordinary care in adjusting claims to the extent to which a case can be settled for less than policy limits. It is a case that has been converted into a verb. Many demands are made in cases in which a plaintiff's lawyer will attempt to "Stowerize" their adversary.¹

While most Texas trial lawyers are familiar with the doctrine, the recent discovery, preservation, and unveiling of the case has enabled your author to discover items of Stowers trivia unknown to many lawyers who send and receive demand letters that cite the case.

1) Timeline of the case

- June 23, 1895 – Mamie Bichon born in Laredo, Texas.
- 1889 – Stowers Furniture moves from Birmingham, Alabama to Texas.
- 1913 – American Indemnity Company is founded.
- January 23, 1920 – Accident takes place at Austin and Capitol Street.
- March 3, 1920– *Bichon v. Stowers Furniture* lawsuit filed.
- May 21, 1921– Verdict received in favor of Mamie Bichon for \$12,207.00.
- June 28, 1923 - *Stowers Furniture v. Mamie Bichon*; verdict affirmed by the 1st Court of Appeals in an opinion by Associate Justice Charles Lane.. 254 S.W. 606.
- April 17, 1924 – *Stowers Furniture v. American Indemnity Company* lawsuit filed.
- September 8, 1926 – Mamie Bichon dies of heart disease at age thirty-one.
- February 26, 1926 – Judge Walter Monteith grants instructed verdict for American Indemnity against Stowers Furniture.

May 19, 1927 – First Court of Appeals affirms instructed verdict in case. 295 S.W. 257.

March 27, 1929 – Texas Supreme Court adopts Commissioners' Opinion and reverses trial court and Court of Appeals. 15 S.W.2d 548.

September 19, 1929 – Mandate from Texas Supreme Court issued remanding case.

February 20, 1930 – Retrial of *Stowers v. American Indemnity* Case starts.

February 27, 1930 – Judge Charles Ashe signs verdict in favor of *Stowers Furniture Company*.

April 16, 1931 – First Court of Appeals affirms second trial in an opinion by Associate Justice George Graves. 39 S.W.2d 956.

2) There were two trials of *Stowers Furniture v. American Indemnity Company*.

While Mamie Bichon's case against Stowers was tried in 1922, it was not until 1926 that Stowers Furniture's case against AIC would go to trial. In that case, Judge Walter Monteith of the 61st District Court excluded seven of Stowers Furniture's witnesses, and then granted an instructed verdict for AIC, ordering that its insured take nothing. There was an appeal to the First Court of Appeals, then located in Galveston, which was affirmed. The renowned Stowers opinion was an appeal from that instructed verdict. By the time of the second trial in 1930, Judge Walter Monteith was serving as Mayor of Houston, and the case was tried before the legendary Judge Charles Ashe of the 11th District Court. In that trial Ashe allowed all of the witnesses that Monteith had excluded, and submitted a single question to the jury., asking only if a company using

ordinary care would have settled the case for \$4000.00, After the jury answered that question “yes” the Judge found that damages of \$19,309.65 had been sustained by Stowers Furniture as a matter of law.

3) The excluded medical witness.

The case file reflects that Judge Monteith excluded from evidence at the first *Stowers Furniture v. AIC* trial testimony from Ms. Bichon’s physician, Dr. C. E. Bruhl. Dr. Bruhl was prepared to testify that he had examined Miss. Bichon a month before the accident and found nothing wrong with her heart, but that a month after the accident, she had heart murmurs and cardiac enlargement. A bill of exception made it clear that this was being offered for the purpose of showing that her settlement demand of \$4,000.00 was one that should have been accepted by AIC.

Miss Bichon died in 1925, five years after the accident and three years after the trial, at the age of thirty-three. The death certificate states that she died of a heart condition.

4) Winston Churchill’s connection to the case, however tangential.

The trial judge in the first trial of *Stowers Furniture v. AIC* was Judge Walter Monteith of the 61st District Court. Monteith had lived a colorful life and was thought to be quite a character.

Monteith graduated from the University of Texas in 1899 and played on the University’s first undefeated football team. After graduation, he immediately left for Cape Town, South Africa to serve in the British Army during the Boer War. Why a man who was an American Citizen and a lifelong Texan felt an urge to volunteer to fight a war in service of another country thousands of miles from his home is unknown. We know that Monteith arrived in South Africa in October of 1899, which was about the same time that a war correspondent for the London Morning Post named Winston Spencer Churchill arrived. Monteith was assigned to the South African Light Horse Unit. For several days after Monteith’s arrival, Churchill followed the unit and wrote about them in his dispatches home. Two weeks after Monteith’s arrival, Churchill decided that he wanted to get closer to the front and used his journalist credentials to take a train there. The Boer guerillas derailed the train he was on and took

Churchill prisoner. Monteith had not followed Churchill, since his unit was not assigned to go to the front. Nonetheless, it is probable that the two met during the time that the future prime minister was serving with the future judge.

Churchill rather famously escaped from the Boer’s Prisoner of War camp and made it back to the English lines. He was declared a hero and returned to England to run for a seat in the House of Commons, a position he would have until the early 1960’s.



Winston Churchill, on the far right, as a prisoner of war in South Africa. Walter Monteith, the future judge in the *Stowers* case, did not join the expedition in which Churchill was taken prisoner.

Monteith served in the British army until the war ended in 1902, and then returned to the Western Hemisphere, although not to Texas. He went to Nicaragua, where he helped run a banana farm and hunted iguanas. When he returned to Texas, he read law in a friend’s law office and became a lawyer. When World War I started, he volunteered to serve, this time in the American Army. After discharge, he was appointed by Governor William P. Hobby to serve as Judge of the 61st District Court.

5) Politicians in the case, and politics afterwards.

At the time of the trials of these cases, Houston was a city on the move but was a fraction of its current size. The 1920 census tells us that the city’s population was 136,276. The attorney for Miss Bichon was Norman Atkinson, the immediate past County Judge of Harris County. One of Atkinson’s primary efforts in office was to build a road between Houston and Galveston, a project still under construction in 2025. The attorney for *Stowers Furniture*, who had been hired by American Indemnity, was Ben Campbell, who had served as Mayor of the City of Houston from 1913 to 1917. He was very active in the efforts to design and build the Port of Houston. Since all of the jurors of that era were poll tax-paying male voters, it is likely

that a number of the jurors knew at least one of the two lawyers.ⁱⁱ

Judge Monteith was politically active as well. He left the 61st District Court in 1929 when he ran for Mayor and defeated the incumbent, Oscar Holcombe. In 1933, Holcombe ran against, and defeated, Monteith in a rematch. In 1936, Monteith announced his candidacy for the 11th District Court, running against Judge Charles Ashe, a thirty-six-year veteran of the bench who had presided over the second trial of *Stowers v. AIC*. Ashe was 78 years old, and immediately announced that he would not run, saying “The game is not worth the candle.” To get back at Monteith, Ashe recruited, of all people, Norman Atkinson to run against Monteith. In a close race, Atkinson was elected as the twenty-second Judge of the 11th District Court,ⁱⁱⁱ and served until his death in 1943. Monteith ran for and was elected to the First Court of Appeals in 1939 and served until his death in 1953.

6) The Plaintiff’s pleadings were openly racist.

At all operative times during the history of this case, the Ku Klux Klan was a force in Texas politics. In 1924, 1926 and 1928, the Klan ran slates of candidates for numerous public offices throughout the state. In Harris County, the Klan slate was largely, but not entirely successful in the 1926 election. There is little question that there were considerable elements of racism present in society, even among those who did not support the Klan.

Racism reared its ugly face in the pleadings in the *Stowers* case. The pleadings note:

Defendant, who was conducting plaintiff’s defense in said underlying cause, had to rely for this defense upon the naked statement of this plaintiff’s said servant who was a Negro boy and interested in clearing or showing himself guilty of no wrong, whereas the said Mamie Bichon had two reputable white witnesses who were in nowise interested in the suit...

American Indemnity fired back with special exceptions that, for its time, was racially advanced:

Defendant specially excepts to that part...for the reason that this court will not consider that white witnesses are more truthful than black or that a negro boy was interested, as he was not a party to the suit, or that a negro boy may not be as reputable as a white witness, and that said allegations are inflammatory and improper...

The file contains no ruling on that special exception.

Sadly, the appellate briefs and, to a much extent, the appellate opinions carry forward this racism, as the race of the witnesses was referred to with regularity.

7) The Commission of Appeals decided the case – Not the Texas Supreme Court.

It is today long forgotten by most how many members of the Texas Supreme Court heard the case. The answer is – NONE. From 1918 until 1945, the Texas Supreme Court consisted of three members. There were an additional six judges who were members of the Texas “Commission of Appeals.” This was a group of judges who assisted the Supreme Court of Texas by writing opinions that were assigned to them. In 1928, the members of the Commission’s Panel A were Judge Richard Critz, Judge Luther Nickels, and Judge J. D. Harvey.^{iv} The Supreme Court would then either approve the opinion, approve the holding, or disapprove the opinion and substitute it with one written by the Court.^v Shortly after the *Stowers* case arrived in Austin, the Supreme Court referred the case to the Commission’s Panel A.

It is uncertain which of the commissioners was initially assigned the job of writing the opinion in this case. Two opinions are extant, and the holding in the opinion by Commissioner Critz is the one that Texas lawyers have referred to for years as the origin of “The *Stowers* Doctrine.” As will be discussed below, a dissenting opinion by Nickels was not approved, disapproved or even referred to by the Supreme Court.

8) The attempted *ex parte* communication to the Supreme Court of Texas.

The file of the Texas Supreme Court contains a letter from a Dallas Attorney named J. W. Gormley. The letter initially serves as a cover letter for an amicus brief asking the

Court not to adopt Judge Critz’s opinion and to substitute an opinion affirming the dismissal of the case. Significantly, the “cover letter” goes on to ask F. T. Connerly, the Clerk of the Court, that if Chief Justice Calvin Cureton:

“...hesitates to grant the prayer, will you please remind him for me that if the Court adheres to the opinion as written by Judge Critz, it will put us insurance lawyers out of business... If it is not corrected, a new and intolerable burden will be placed upon us Texas Lawyers – a burden that will take all the fight out of us; and a lawyer without courage, yes, without even daring, is of little help.

A copy of the letter to the Clerk of the Court was NOT sent to any of the opposing counsel in the case and clearly was an attempt to make an *ex parte* communication to the Chief Justice. If communication was made, it clearly did not work. The letter is attached to this article in Appendix A.

9) It was not a unanimous opinion.

This is shocking to me. For an opinion with the significance and prolonged use of *Stowers*, it is largely unknown today that THERE WAS A DISSENT. The dissenting opinion was not published in Southwest Reporter in 1929, and it was not a part of the opinion available in Lexis or Westlaw today.

Judge Luther Nickels had been a member of the Texas House of Representatives and been an assistant attorney general. He was a law partner with the controversial U. S. Senator Joseph Weldon Bailey. He was appointed to the Commission of Appeals by Governor Miriam Amanda “Ma” Ferguson and served from 1925 until 1929. A cursory review of the opinions of the Commission of Appeals during those years shows no other dissenting opinions written by Judge Nickels.

The dissenting opinion is not nearly the length of Justice Critz’s majority opinion. It reads like it was written to be the majority opinion, concluding with the sentence “*We recommend* that the judgment of the Court of Civil Appeals be affirmed”. (Emphasis added).

Perhaps the publication of this article and the dissenting opinion will encourage the

digital case publishers to add the dissent to the panoply of Texas appellate opinions available online. It is today unknown why the case was not published in either the Texas Reporter or the Southwest Reporter. While this is sheer speculation by your author, here are some possible reasons:

- A. Chief Justice Cureton did not want any dissent from an opinion in which the Court had adopted only the holding, since none of the three members of the Court disagreed with the opinion of Commissioner Critz.
- B. Since the Commission was only a recommendation to the Supreme Court, the only opinion that mattered was the one the Court adopted.
- C. The Supreme Court’s Official Reporter or the Court’s clerk made a mistake.

The dissenting opinion is attached to this article as Appendix B.

10) The author of the opinion.

Judge Richard Critz was the great, great grandson of a German immigrant to America in the Eighteenth Century. He had assisted then-Williamson County District Attorney Dan Moody in his prosecution of the Ku Klux Klan in the 1920’s. When Moody became Governor, he appointed Critz to the Commission of Appeals, According to Judge Critz’s son-in law, Congressman J. J. “Jake” Pickle, Judge Critz was ideally suited to be an appellate judge. “He would think and write. Write and think. He was always thinking about how future lawyers would cite his cases.”

He was not universally popular with the bar. After he became a member of the Supreme Court in 1937, he was known to respond to an attorney he disagreed with arguing a case “That is the silliest thing I ever heard” and turn his chair away from the speaker’s lectern for the balance of oral argument.

Critz was elected to a full six-year term to the Court in 1938 but was defeated in 1944 by an attorney who was serving with the military in Italy. The supporters of his

opponent used Kritz’s German name against him. They called him “Richardt Kritz” in newspaper advertisements and promoted the slogan “Stop Fritz – Beat Critz.” Fritz was a nickname given to all Nazi soldiers. To make the slogan more effective, they mispronounced Critz’s name to rhyme with “Fritz” rather than the way his name was properly stated, which rhymed with “rights”^{vi}

11) American Indemnity’s attempt to undercut their insured.

The most damaging evidence at both trials in *Stowers Furniture v. American Indemnity Company* was the testimony of W. L. Hartung, the head of AIC’s claims department. His testimony apparently admitted that it was the company’s policy not to pay more than half of the policy limits to settle a claim unless the insured paid the other half, or as much of that as it would take. The reasoning behind this policy was that if the company was going to have to pay policy limits, or anything close to it, they may as well try the case. Stowers had called their employee I. P. Walker who testified that he had demanded that AIC pay the \$4,000.00 of the \$5,000.00 policy limits to settle the case,

but that Stowers Furniture refused to contribute to that settlement amount.

12) The savior of the case – Marcy Lynn Rothman

The original pleadings and district court records of both *Bichon v. Stowers Furniture* and *Stowers Furniture v. American Indemnity* sat in an un-airconditioned and unsecured warehouse from the time it went final in 1931 until 2006. Many pleadings from cases in Harris County’s rich legal history did not survive the invasion of heat, humidity and insects into the warehouse. In 2005, Charles Bacarisse, the then- District Clerk of Harris County, started a program to save endangered papers. Marcy Lynn Rothman found out about the file and arranged to pay for its preservation. She is the only living lawyer whose name is on the file.^{vii} Today, a visitor to the Harris County Courthouse may visit the secure and air-conditioned room dedicated to preservation of the records and surround themselves with the trivia of both of these historically significant cases, and thousands of others.

ⁱ While I am sure there are other cases that have been turned into a verb, the only other one I can think of is “Mirandize” in honor of *Miranda v. Arizona*, 384 U.S. 436 (1966)

ⁱⁱ Women were not allowed on Texas juries until 1954, and the poll tax was not abolished until 1964.

ⁱⁱⁱ The author of this article served as the twenty-sixth Judge of the 11th District Court from 1989 through 2008.

^{iv} Judge Harvey, the deciding judge on the panel, had served as Judge of the 80th District Court in Harris County. He was defeated by a Klan-backed candidate in the 1924 elections. Coincidentally, he had presided over the divorce trial of Miss Bichon’s parents.

^v The late Chief Justice Joe Greenhill once told the author, “I only wrote dissents when outrage overcame inertia.” This was almost certainly an effort at humor. Justice Greenhill was a scholar and a dedicated custodian of the law.

^{vi} To learn more about the 1944 race between Justice Critz and Justice Gordon Simpson, see Mark Davidson and Kent Rutter - *The Texas Supreme Court Goes to War: The Colonel Versus the Judge*, 65 Tex. B.J. 142 (February 2002).

^{vii} The Harris County District Clerk places the name of a person whose donation makes preservation of a file possible on the cover of the preserved file.

The author acknowledges and thanks the authors of an outstanding article about the Stowers case. Vincent Morgan and Michael Sean Quinn wrote and published a great article in the Texas J Journal of Insurance Law in its Winter, 2014 edition. I have shamelessly cribbed numerous facts from that article.



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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:

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- 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:

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