

TEXAS
CIVIL
JUSTICE
LEAGUE

JOURNAL

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TEXAS CIVIL JUSTICE LEAGUE JOURNAL

Spring 2005

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Texas Civil Justice League

Leading the Fight for Lawsuit Reform Since 1986

The Texas Civil Justice League Journal is published by the Texas Civil Justice League. Since 1986, the Texas Civil Justice League has led the fight to create a strong business climate by restoring fairness and stability to the civil justice system.

For more information, contact the **Texas Civil Justice League**,
401 West 15th Street, Suite 975, Austin, Texas 78701,
512-320-0474, 512-474-4334 fax, info@tcjl.com.

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TEXAS CIVIL JUSTICE LEAGUE

Leading the Fight for Lawsuit Reform Since 1986

The 79th Regular Session of the Texas Legislature is in full swing lawmakers are grappling with many important public policy issues, particularly public school finance. Asbestos lawsuit reform also tops the legislative agenda with proposals by Senator Kyle Janek (R-Houston) and Representative Joe Nixon (R-Houston). Consider the recent Tillinghast update on U.S. tort costs (see full story page 12): "In 2002 and 2003, the largest single contributor to the rise in tort costs was a significant upward reassessment of liabilities associated with asbestos claims, whose numbers have continued to mushroom. Without the successful passage of asbestos litigation reform measures, we cannot rule out the possibility of further upward assessments in these liabilities."

It's often said that "everyone pays for lawsuit abuse." We still do, and the system does not discriminate. According to the Tillinghast figures, every American pays \$845 annually for our tort system—from the top CEO to elderly citizens on a fixed income. The study predicts that the figure will top \$1,000 per person by 2006. Clearly, inequities remain. Personal injury trial lawyers continue to file frivolous lawsuits and win outrageous jury awards that threaten the business climate and economy.

The Texas Civil Justice League turns twenty this summer. During the past two decades we have not sought an advantage but a level playing field. Much has been accomplished. Consider how far we have come from the *60 Minutes* "Is Justice for Sale?" exposé of the late 1980s. To ensure long-term reform, the Texas Civil Justice League has always committed itself to an advocacy strategy of education, persuasion, and respect.

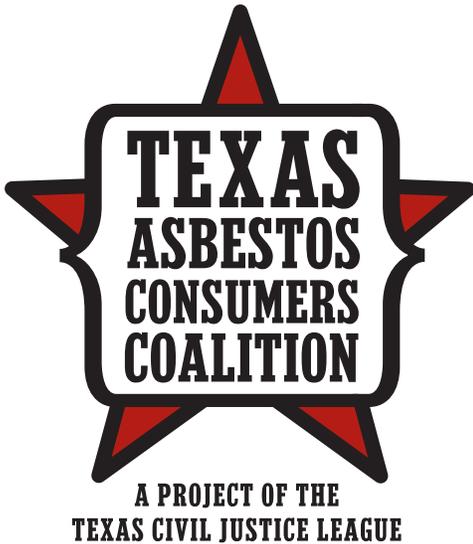
The Texas Civil Justice League has succeeded because of the active support of its members. The staff never forgets that we spend "other people's money." In fact, I encourage you to investigate for yourself what "return on investment" you get from the Texas Civil Justice League and compare it to similar organizations.

We live in a global economy, and lawsuit abuse adversely affects the state's ability to attract new business, create jobs, and remain competitive. What we do in Texas makes a difference.

Regards,

A handwritten signature in cursive script that reads "Cary".

Cary Roberts
Communications Director



STATEWIDE COALITION FIGHTS ASBESTOS LAWSUIT ABUSE

Reforms Protect Victims and Businesses

The Texas Asbestos Consumers Coalition is working to achieve meaningful asbestos lawsuit reform that will move injured people to the “front of the line” at the courthouse and protect the rights of others to seek compensation later if they become sick. The coalition is a special project of the Texas Civil Justice League.

Since 1988, more asbestos-related lawsuits have been filed in Texas than in any other state. Personal injury trial lawyers pack state court dockets with lawsuits filed on behalf of people, recruited through advertising and mobile screenings, who do not and may never have an asbestos-related illness. A January 2005 Tillinghast study revealed asbestos claims as the single largest contributor to rising national tort costs.

Governor Rick Perry highlighted asbestos lawsuit reform as a priority issue during his State of the State address delivered January 26, 2005. “Let’s end Texas’s status as the home of frivolous asbestos lawsuits,” Perry said.

Trial lawyers reap huge profits from an unfair system. People who are ill and in need of financial assistance can’t get to the “front of the line” at the courthouse. They wait behind thousands of plaintiffs who aren’t even sick.

In addition to legitimate asbestos victims, all Texans suffer as frivolous asbestos lawsuits bankrupt companies and cost jobs.

Facts about asbestos and asbestos lawsuits

Asbestos is a commercial name for six minerals used extensively in industrial applications, especially during the 1940–70s. These minerals have been used in thousands of products, including insulation and fireproofing materials, automotive brakes, textile products, cement, and wallboard.

Exposure to asbestos, through inhalation of microscopic asbestos fibers, is linked to certain malignant and non-malignant diseases, including asbestosis (a respiratory illness), lung cancer, and mesothelioma (a rare cancer of the thin membrane that surrounds the lung and other internal organs). These diseases do not develop immediately following asbestos exposure. Many exposed people never develop an asbestos-related illness.

During the last three decades, hundreds of thousands of lawsuits and claims alleging asbestos-related disease have been filed nationwide. In the early 1990s, between 15,000 and 20,000 new lawsuits were filed each year. According to one estimate, the number of asbestos lawsuits pending in state and federal courts doubled in the 1990s, from approximately 100,000 to more than 200,000.

Since 1988, more asbestos-related lawsuits have been filed in Texas than in any other state.

Personal injury trial lawyers created the asbestos lawsuit crisis

Personal injury trial lawyers spend millions of dollars on aggressive marketing and scare tactics recruiting plaintiffs—sick or well—to join massive class action lawsuits. The greater number of plaintiffs—ill or not—the greater the dollar amount of a possible reward. Since there is no financial incentive for trial lawyers to change this approach, lawmakers must fix a broken system.



“Let’s end Texas’s status as the home of frivolous asbestos lawsuits.”

—Governor Rick Perry. State of the State Address, January 26, 2005

Trial lawyers fund “free” asbestos screenings, administered in traveling labs parked outside factories and other places of business. A typical screening consist of a simple chest x-ray. Many participants are told that their x-rays show detectable markings on the lungs and that this is “consistent” with asbestos-related disease. However, it has been estimated that as many as 90 percent of those recruited as plaintiffs are not experiencing any symptoms of asbestos-related disease affecting their daily functions.

The statute of limitations begins to run as soon as a person learns they may have an asbestos-related disease or symptom. People fear that time to sue may run out, which encourages them to “sign up” quickly and discourages them from seeking a second opinion from a doctor. The unfortunate result is that people who are unharmed and who would never consider filing a frivolous or junk lawsuit are duped into doing so by this trial lawyer scheme.

The crush of asbestos litigation has been costly

More than seventy companies have declared bankruptcy since 1982 due to asbestos lawsuits. It’s estimated that between 60,000 and 128,000 American workers already have lost their jobs because of asbestos-related bankruptcies. The total number of jobs lost may eventually reach 432,000. Each worker who loses a job due to an asbestos-related bankruptcy loses between \$25,000 and \$50,000 in wages over their careers. Those workers also see the value of their 401(k) retirement plans drop by 25 percent or more due to bankruptcies.

Asbestos litigation has cost our court system. In 2002, the RAND Institute for Civil Justice estimated that 600,000 asbestos claims and lawsuits have been filed, costing businesses more than \$54 billion. The study also found that 65 percent of compensation over the last decade was paid to people with non-cancerous conditions. A recent study by Tillinghast revealed asbestos claims as the single largest contributor to rising tort costs. Tillinghast

estimates that without sweeping structural changes to the tort system including asbestos reform, annual tort costs could approach \$1,000 per U.S. citizen by 2006.

Meaningful asbestos lawsuit reform must accomplish four goals

The law should clearly specify that a person might only sue when he or she is actually sick with an asbestos-related disease. For this purpose, the proposed law provides that a doctor must administer lung testing and diagnose a disease related to asbestos, before a lawsuit may proceed.

The law should apply to all claims that have not yet gone to trial, so that only the truly sick may get their day in court. Tens of thousands of lawsuits have already been filed in Texas courts in which the claimants are not sick.

People who are not yet ill should not have to worry that the time in which a lawsuit must be filed (usually two years from the date of the injury) may run out before they can file their claim. The law would make sure that the time only begins to run when a person is actually sick.

The law will treat asbestos lawsuits just like any other personal injury lawsuit. The same 2003 state laws for addressing lawsuit abuse will also apply to asbestos claims.

The law will prevent unimpaired claimants from simply converting their asbestos claims into silica claims. Just as in asbestos lawsuits, medical testing and objective criteria will be used to determine whether a claimant has a silica-related disease and may proceed with a lawsuit.

For more information, visit www.texasbestos.com.



TEXAS CIVIL JUSTICE LEAGUE

19th Annual Meeting. Austin, Texas

“I am honored to extend greetings to all in attendance at the Texas Civil Justice League’s 19th Annual Meeting. Your commitment to the democratic principles of a fair and reasonable legal system is continuing to establish a foundation of strength for the future. I commend your efforts and wish you continued success.” —Governor Rick Perry

Texas Civil Justice League (TCJL) directors and members participated in the 19th Annual Meeting, Wednesday, November 3, 2004. Chief Justice Wallace Jefferson of the Texas Supreme Court was the keynote luncheon speaker. The morning membership included election analysis and issue briefings from Matt Fullenbaum, Director of Legislation, American Tort Reform Association; Olan Brewer, Associated Research; Nub Donaldson, TCJL Chairman of the Board of Directors; and Dr. George S. Christian, TCJL General Counsel. Robert S. Howden, Texas Asbestos Consumers Coalition Coordinator, moderated a discussion on asbestos litigation reform efforts with Senator Kyle Janek (R-Houston) and former Lieutenant Governor Bill Ratliff.



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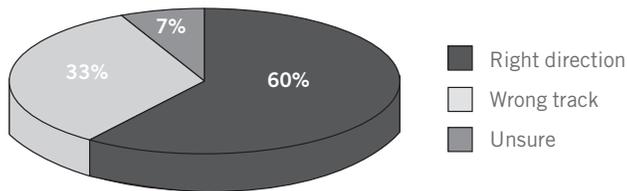
- (1) Bill Barton, TCJL Executive Committee Chairman, presides over the annual membership meeting.
- (2) Matt Fullenbaum, Director of Legislation for the American Tort Reform Association and TCJL's favorite Yankee, briefs members on federal reform issues.
- (3) Dr. George S. Christian, TCJL General Counsel, prepares to discuss the Texas Supreme Court and Courts of Appeal.
- (4) Olan Brewer of Associated Research provides state election analysis.
- (5) Ron Hinkle and Thomas Ratliff of the Ratliff Company participate in the asbestos litigation reform panel discussion.
- (6) TCJL Board Chairman Nub Donaldson outlines the 2005 Program of Work.
- (7) Dan Hinkle updates members on anti-indemnity issues facing the Texas Legislature.
- (8) Former Lieutenant Governor Bill Ratliff, a member of the Texas Asbestos Consumers Coalition lobby team, discusses the outlook for asbestos litigation reform.
- (9) TCJL President Ralph Wayne presents Senator Robert Duncan (R-Lubbock) a portfolio, custom made by Capitol Saddlery, in recognition of his work on civil justice reform.
- (10) Senator Kyle Janek (R-Houston) accepts a Capitol Saddlery portfolio from Robert S. Howden, asbestos coalition coordinator, in recognition of his efforts to pass asbestos litigation reform.
- (11) Former Lieutenant Governor Bill Ratliff, G. Edward Pickle of Shell Oil Company, and Senator Kyle Janek (R-Houston) discuss asbestos litigation reform at the 19th Annual Meeting luncheon.
- (12) Land Commissioner Jerry Patterson participates in the 19th Annual Meeting luncheon.
- (13) Chief Justice Wallace Jefferson of the Texas Supreme Court delivers the keynote luncheon address.
- (14) Chief Justice Wallace Jefferson meets students from the University of Tulsa School of Law after the 19th Annual Meeting luncheon.
- (15) TCJL President Ralph Wayne visits with Diane Davis, Executive Director of East Texans Against Lawsuit Abuse, at the 19th Annual Meeting in Austin.
- (16) TCJL board member Dennis A. Kearns of BNSF Railway watches Senator John Kerry's concession speech after the 19th Annual Meeting luncheon.

WHAT TEXANS THINK

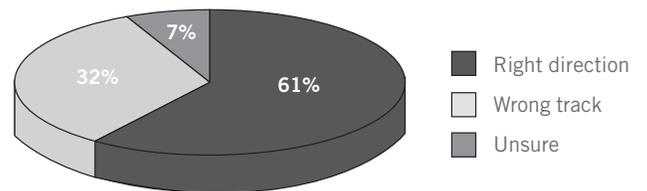
Public Opinion Poll on Leading Issues in Our State Fleishman-Hillard 2005 Lone Star Survey

Fleishman-Hillard released the findings of its first Lone Star Survey in January 2005.

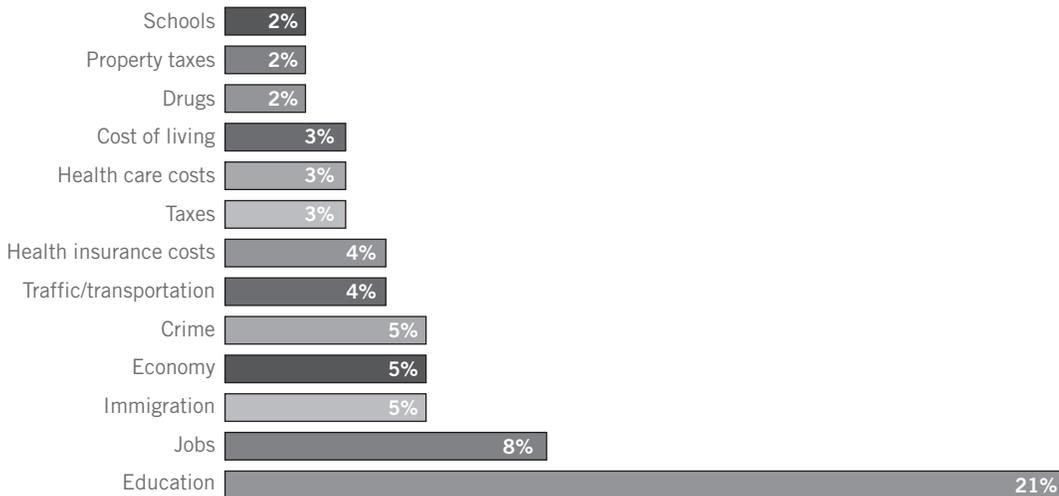
Do you feel things here in Texas are going in the right direction, or do you feel they have gotten off on the wrong track?



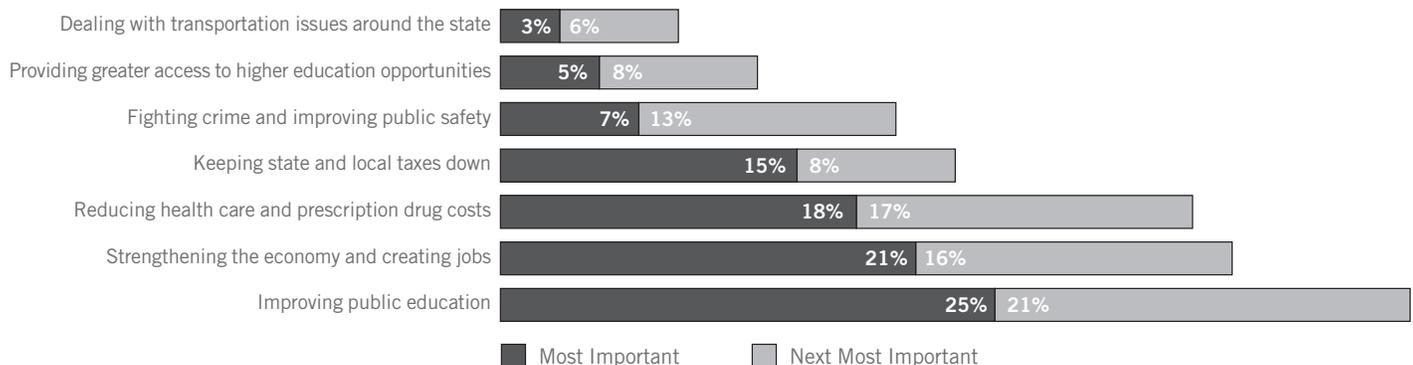
Do you feel the economy here in Texas is moving in the right direction, or do you feel it has gotten off on the wrong track?



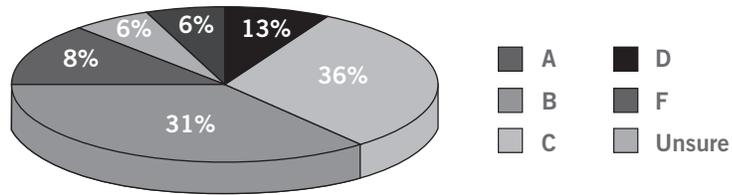
What do you think is the most important problem facing this part of Texas today?
Open-ended question



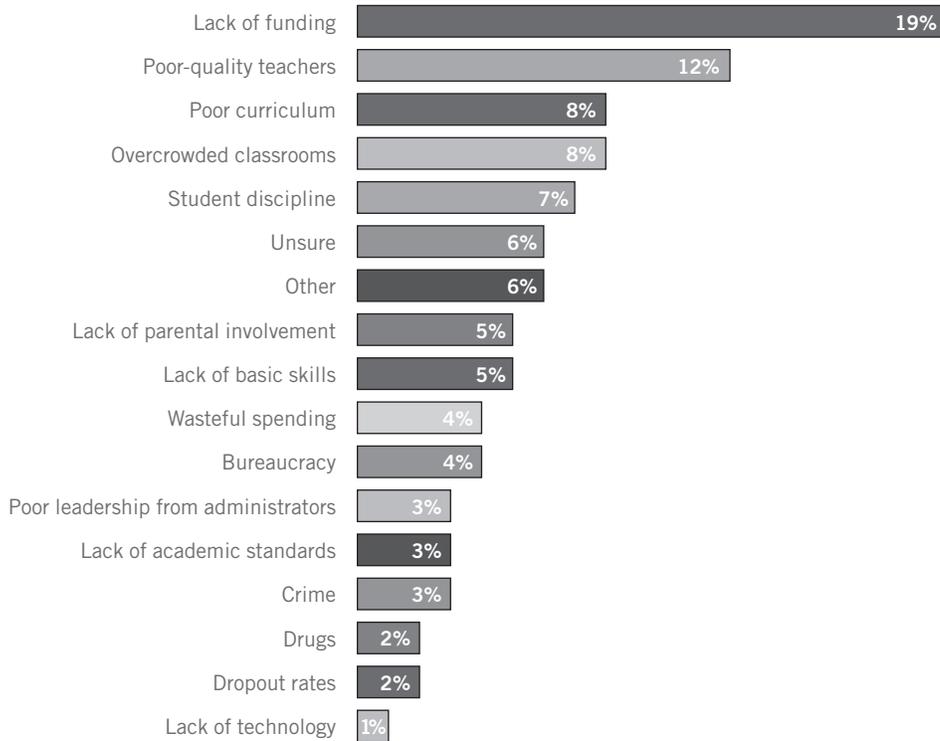
Which of these issues would you say is the most important for our state government to address, and which is the next most important?



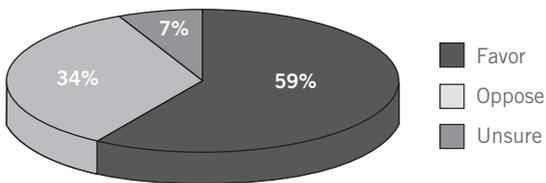
What grade would you give the public school system here in Texas when it comes to providing quality education to our children?



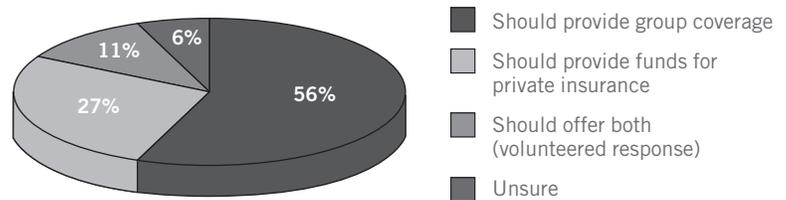
What would you say is the biggest problem facing Texas public schools today?
Open-ended question



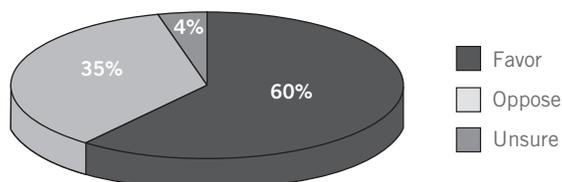
Are you personally in favor of, or opposed to allowing gambling to occur here in the State of Texas?



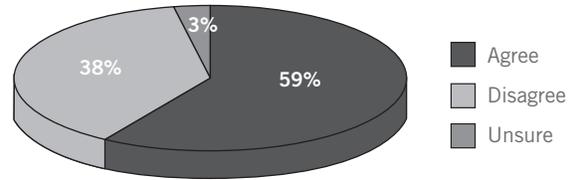
Should employers continue to provide group health insurance to their employees, or should employers provide their employees with funds to purchase a private health insurance policy that best suits their needs?



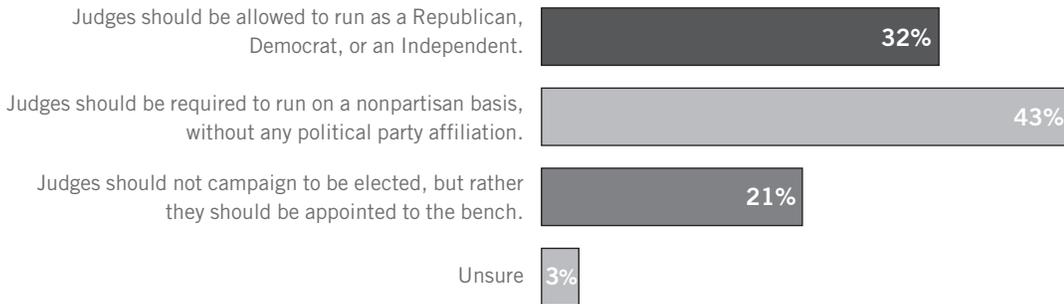
Do you favor tort reform measures that place caps on the amount of money that companies must pay for things like pain and suffering, or do you oppose tort reform measures because they limit individual rights by placing caps on the amount of money that they can collect in lawsuits?



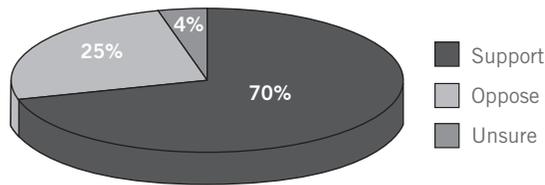
Do you agree or disagree with the following: In order to reduce health care expenses for employers, workers who are injured on the job and covered by workers compensation insurance should be required to choose their physician from a network of doctors supplied by their employers, much like their current health plan.



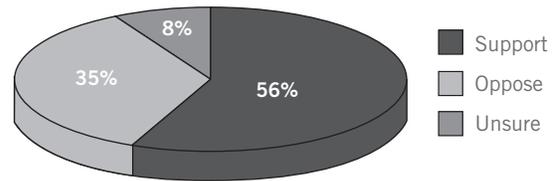
Which of these statements comes closest to your opinion?



Do you support or oppose the death penalty?



Do you personally support or oppose the use of embryonic stem cells in medical research?



Survey Methodology

Findings are drawn from telephone interviews with 500 randomly selected voters throughout Texas. The sample is representative of statewide population. The margin of error associated with a sample of this type is + 4.5 percent at the 95 percent confidence level. Interviews were conducted January 2–3, 2005.

For more information about Fleishman-Hillard and the Lone Star Survey, visit lonestarsurvey.com.



CORNYN HIGHLIGHTS FEDERAL CLASS ACTION REFORM

Meets with Central Texas Small Business Leaders

In late February, U.S. Senator John Cornyn (R-Texas) talked with small business leaders from Central Texas during a roundtable discussion in Austin, Texas. The event was hosted by Austin businessman Marc Rodriguez and the Greater Austin Hispanic Chamber of Commerce. Cornyn discussed the recent federal legislation that transfers large, multi-state class action lawsuits to federal court. President George W. Bush signed the measure February 18, 2005. "We're making important progress toward a better legal system," President Bush said during the East Room signing ceremony. Cornyn explained that federal class action reform was vital to the economy and job creation because a "handful of entrepreneurial lawyers abuse the system." He thanked statewide coalitions for their work on civil justice reform, including Texans for Lawsuit Reform and the Texas Civil Justice League.

For more information about Senator Cornyn's work on lawsuit reform and other public policy issues, visit www.cornyn.senate.gov.



- (1) U.S. Senator John Cornyn (R-Texas) speaks to the media after a roundtable discussion with Central Texas small business leaders.
- (2) TCJL President Ralph Wayne visits with U.S. Senator John Cornyn (R-Texas) about recent civil justice reform that moves large, multi-state class action lawsuits to federal court.

2005 TCJL Program of Work

Asbestos and Silica Litigation Reform/Texas Asbestos

Consumers Coalition (TACC)

- Legislation sponsored by Senator Kyle Janek (R-Houston) and Representative Joe Nixon (R-Houston).
- Establish objective medical criteria for screening unimpaired asbestos and silica claims currently pending or filed in the future.

Forum non conveniens

- Legislation sponsored by Senator Robert Duncan (R-Lubbock) and Representative Dan Gattis (R-Georgetown).
- Makes it easier for judges to dismiss out-of-state claims.

Judicial Selection

- Support merit selection of judges, especially appellate judges. Avoid the appearance of impropriety fostered by partisan elections and political contributions. TCJL is working closely with Senator Robert Duncan (R-Lubbock) on this legislation.

Anti-Indemnity

- Adopt same exclusive remedy for workers' compensation third party claims as exist in forty-nine other states. Oppose legislative efforts to invalidate contractual indemnity provisions.

Obesity Litigation

- HB 107 by Representative Corbin Van Arsdale (R-Houston)
- Bar "obesity" claims against fast-food businesses, except where fraud is involved. The Texas Restaurant Association, a founding member of TCJL, is a key player in this legislation.

Attorney Contingency Fees

- Require attorney contingency fees to meet statutory standards for fairness and conscionability through full disclosure.

Jury Service

- Make jury service easier for citizens by establishing a fund to help supplement lost wages for jurors who serve more than ten days in civil cases.

Settlement Credit

- Make necessary clean-up changes to House Bill 4, particularly to restore the dollar-for-dollar settlement credit and remove remaining loopholes in the forum non conveniens statute.

JUDICIAL COMPENSATION

The Texas Civil Justice League supports the Alliance for Judicial Funding's efforts to maintain the high quality of the state's judicial system. It is important that judicial compensation be set sufficiently high to attract the most able attorneys to the bench and to retain experienced judges.

In 2000 the average salary for attorneys licensed ten years was \$190,277. The State of Texas currently pays the justices of the Texas Supreme Court \$113,000, appellate justices \$107,350, and district court judges \$101,700. Counties may pay a salary supplement. However, except in Collin, Ellis, Harris, Hill, Tarrant, Travis, and Williamson Counties, these supplements may not effectively exceed \$4,650 for justices of Courts of Appeal and \$9,300 for District Court judges. On September 1, 2007, these counties will also be capped in their ability to pay supplements to district courts. Statutory county courts and probate courts do not have a cap on their pay, and, therefore, counties are currently paying many of these judges more than members of the Supreme Court.

Recommendations

Substantially improve judicial salaries. If the judicial compensation paid by other states or the federal district judges is used as a guideline, it would increase the salaries not less than:

Justices of the Texas Supreme Court and Court of Criminal Appeals

\$155,451

Justices of the Courts of Appeal (95 percent under current law)

\$147,638

District Court judges (90 percent under current law)

\$139,906

The Committee on Court Funding, while recognizing the budgetary impact of this proposal, recommended these judicial salaries as a priority on May 5, 2004.

Review the system used for compensating judges.

A joint House and Senate committee should make an interim report on judicial salaries before the 2007 regular session. The committee should consider adopting a new guideline for compensation that sets the salary of the chief justice of the Texas Supreme Court based on either the average salary of the five most comparable states to Texas or the salary of federal district judges. It is recommended that the new guideline establish goals for budgeting judicial salaries sufficient to attract the most able attorneys to the bench. The compensation increase should also be designed to retain experienced judges.

Raise or remove the cap for county supplements.

This will allow counties, where county commissioners believe cost of living adjustments may be necessary, to increase their supplements for district and appellate judges. These salaries should not exceed the salaries of the justices of the Texas Supreme Court or Federal District judges, whichever is higher.

In 1999 both the Commission on Judicial Efficiency and the 76th Texas Legislature recognized that the judicial branch must be provided regular pay raises to attract and retain quality judges and keep up with cost of living increases. At the conclusion of the 76th Regular Session, judicial pay in Texas's highest courts was ranked at 23rd among the states, intermediate appellate courts were ranked 18th, and general trial courts were ranked 22nd. Since the 76th Regular Session, state-funded judicial salaries have fallen from 23rd to 39th in the highest courts, 18th to 34th in appellate courts, and 22nd to 39th in general trial courts.

The lack of a comprehensive judicial compensation system in Texas has resulted in a loss of good judges who cannot afford to serve. The judiciary appreciates the past efforts of the legislature, and recognizes that the lack of increases in compensation is not solely within its control: a lack of appropriate public effort, to authorize and improve a compensation system through a judicial compensation commission, led to the defeat of the 1999 referendum; the funds appropriated in 2001 for judicial salary increases were either vetoed by the governor or not certified by the Comptroller of Public Accounts; and in 2003, because of the economy, lack of available funds prevented any consideration of judicial compensation increases. The judiciary does not want to be perceived as repeatedly seeking its own self-interest through pay raises. The lack of a comprehensive judicial compensation system in Texas has resulted in recurring debates every legislative session, and inequities to both the legislature and the judiciary. In summary, the primary guideline for judicial pay in Texas should be based on objective criteria either from judicial salaries in comparable states or to federal district court judges, and should include an automatic adjustment to account for changes in the cost of living.

Judicial Salaries for Ten Largest States (2003)

State	Chief Justice	Associate Justice	Courts of Appeal
California	\$191,000	\$176,000	\$165,000
Michigan	\$165,000	\$165,000	\$151,000
New Jersey	\$164,000	\$159,000	\$150,000
Illinois	\$158,000	\$158,000	\$149,000
New York	\$156,000	\$151,000	\$144,000
Florida	\$154,000	\$154,000	\$142,000
Georgia	\$153,000	\$153,000	\$152,000
Pennsylvania	\$143,000	\$140,000	\$121,000
Ohio	\$134,000	\$126,000	\$117,000
Texas	\$115,000	\$113,000	\$107-112,000
National avg.	\$130,221	\$125,292	\$121,697

Source: National Center for State courts (www.nsconline.org)

U.S. TORT COSTS: 2004 UPDATE

Trends and Findings on the Cost of the U.S. Tort System

While it is impossible to accurately predict future increases in tort costs, it does seem reasonable to assume that, without sweeping structural changes to the U.S. tort system, annual increases will be in the 5 percent to 8 percent range for the next several years. At this rate of increase, tort costs could approach \$1,000 per U.S. citizen by 2006—representing a new quadruple-digit benchmark.

U.S. Tort Costs: 2004 Update is the eighth study of the nation's tort costs published by the Tillinghast business of Towers Perrin. The first study was completed in 1985. The most recent study, incorporating results through 2002, was published in 2003. The 2004 update provides results from 1950 through 2003, with projections through 2006.

Key findings

U.S. tort costs grew by 5.4 percent in 2003, representing a dramatic reduction from the double digit trends experienced in 2001 and 2002. This reduction is reflective of more moderate tort cost trends in the commercial lines of insurance, where asbestos-related costs accounted for large increases in tort costs during 2001 and 2002.

The U.S. tort system cost \$246 billion in 2003, which translates to \$845 per person, or \$35 per person more than in 2002. This compares to a cost of \$12 per person in 1950 (not adjusted for inflation).

Over the last fifty years, tort costs in the U.S. have increased more than a hundredfold. In contrast, overall economic production (as measured by GDP) has grown by a factor of thirty-seven and population has grown by a factor of less than two.

The 5.4 percent rate of growth in tort costs in 2003 slightly exceeded overall economic growth of 4.9 percent. During the past fifty years, growth in tort costs has exceeded growth in GDP by an average of two to three percentage points, with the largest disparity having been nearly six percentage points in the 1950s. In the 1990s, this trend reversed itself, with GDP growth in excess of growth in tort costs, reflecting a period of steady economic growth and low inflation without significant growth in tort costs.

Since 1975 (the first year for which insured medical malpractice costs were separately identified), the increase in medical malpractice costs has outpaced increases in overall U.S. tort costs. Medical malpractice costs have risen an average of 11.8 percent per year, compared to an average annual increase of 9.2 percent per year for all other tort costs. The compounded impact of this twenty-eight-year difference in growth rates is that medical malpractice costs have risen by a factor of twenty-three since 1975, while all other tort costs have grown by a factor of twelve.

At nearly \$27 billion in 2003, medical malpractice costs translated to \$91 per person. This compares to \$5 per person in 1975 (not adjusted for inflation). This significant escalation in medical malpractice costs has contributed to the increase in health care costs in the U.S. over the past thirty years.

Future implications

Despite the more moderate rate of growth in tort costs in 2003 relative to the two years prior, there are a number of social influences, potential legislation reforms, and political changes that make the future uncertain.

Reassessments of liabilities

In 2002 and 2003, the largest single contributor to the rise in tort costs was a significant upward reassessment of liabilities associated with asbestos claims, whose numbers have continued to mushroom. Tillinghast estimates that this reassessment accounted for \$9 billion of the increase in 2003 tort costs over 2002 levels, a slight decrease from the \$10 billion estimated impact in 2002. Without the successful passage of asbestos litigation reform measures, Tillinghast cannot rule out the possibility of further upward assessments in these liabilities.

Without the asbestos-related costs, the increase in U.S. tort system costs between 2002 and 2003 would have been approximately 6.4 percent, compared to an 11.5 percent increase between 2001 and 2002 for comparable costs. However, reassessments have occurred in other areas, as well. In 2003, for example, a number of major insurance companies reported significant upward reassessments of their non-asbestos liabilities, in lines of insurance such as directors and officers liability and general liability. Some industry experts project that the insurance industry's liability estimates (including asbestos) are understated by as much as \$60 billion. To the extent that this projection is correct, significant reassessments would likely occur in the liability lines of insurance, there will continue to be upward pressure on tort costs.

Litigious society

Reports of class action lawsuits by groups of injured parties and shareholder lawsuits against the boards of directors of publicly traded companies continue to appear in the business media. Absent sweeping reform, Tillinghast sees no indication that these

trends will abate in the near future. In fact, there appears to be a shift in the types of liabilities that make up the total tort costs in the U.S., from individuals suing individual entities to groups of plaintiffs taking legal action against one or more entities. Current examples include potential claims against pharmaceutical companies for the alleged ill effects of certain prescription drugs and actions against food establishments for obesity-related injuries.

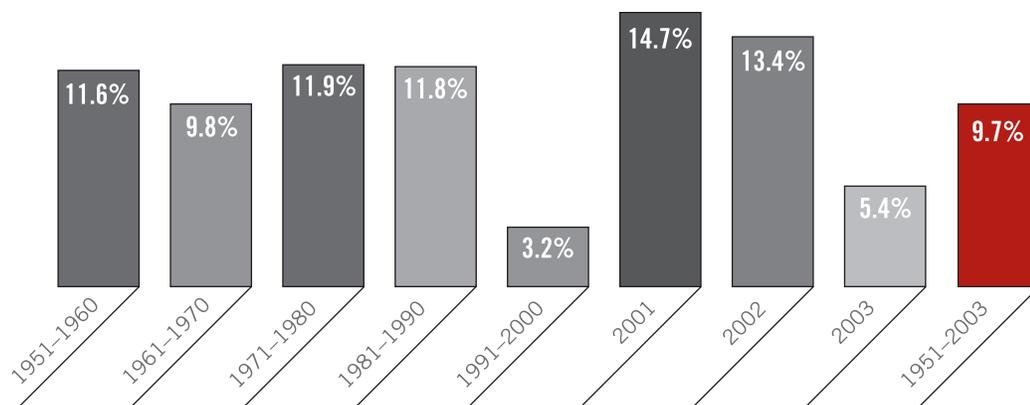
Impact of election results on reform measures

A number of states have introduced legislative tort reform measures; whether these measures will be successfully implemented or subsequently overturned by the courts (which has occurred in the past) is unknown at this time.

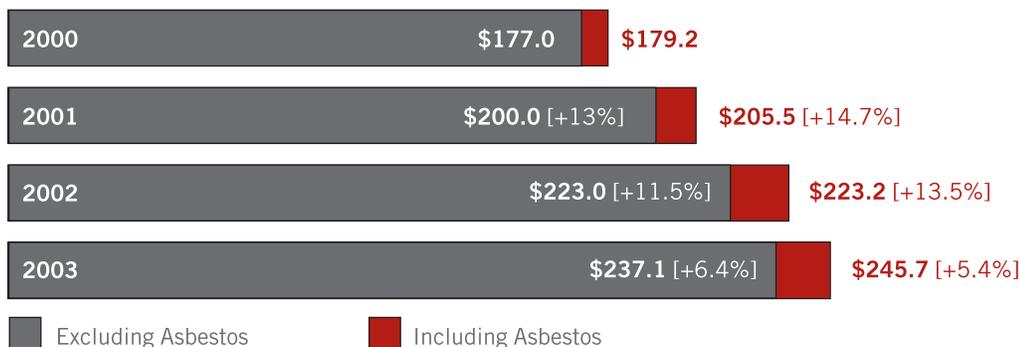
Some suggest that the recent election results in the U.S. and the resulting Republican-dominated Congress could result in greater prospects for significant legal reform. These reforms might address such areas as class action lawsuits, medical malpractice claims, and asbestos litigation.

Growth of Tort Cost

Average Annual Increase in Tort System Costs



Impact of Insured Asbestos Liabilities on U.S. Tort Costs [\$ billions]



PERSONAL RESPONSIBILITY

by Smith Houston



Smith Houston won the East Texans Against Lawsuit Abuse 2004 sixth grade essay contest. He received a \$500 savings bond from Regions Bank. Houston is a Longview resident and a student in Wendy Hammond's English class at Trinity School of Texas.

Hi, I'm Smith Houston. I'm going to tell you why we need personal responsibility.

I think we need personal responsibility because people just can't go blaming other people for what they did themselves. That's why we have East Texans Against Lawsuit Abuse. They are the ones who support the people who take responsibility for their own actions.

One of the benefits of people taking responsibility for their own actions is that the cost of things are kept down for consumers. For example, if it costs \$5,000 to make a car this year, and if you sell it for \$6,000, then by next year, because of accidents and lawsuits, it will cost \$6,000 and you will not be able to pay for it.

We also need personal responsibility because it will keep our insurance premiums down. For example, if everybody pays for their insurance and some people take advantage for their own benefit, then everyone pays more in the long-run.

Another reason is that if you set a good example for others, then they will follow you. On the other hand, if you set a bad example, then they may follow that, too. For example, if my brother sees me cussing, then he might want to cuss, too. But if he sees me helping others, then he might help others, too.

What is an accident? An accident is when something happens and you don't mean for it to happen. For example, you can fall on your brother and say, "I'm sorry, are you okay?" That would be the right thing. The wrong thing would be, "Well you made me fall on you. You owe me big time."

In conclusion, there is a right and a wrong way to handle things that happen in your life. Taking personal responsibility for your own actions is the right thing to do. Blaming other people for your mistakes, accidents, and things you don't have control over is just plain wrong. The best rule that you can follow is the Golden Rule. "Do unto others as you would have them do unto you."

IMPROVING JURY SERVICE IN TEXAS

The Public Policy Purpose

In both civil and criminal cases, defendants should be judged by a jury of their peers. Jury service is one of the most important duties of good citizenship. All citizens have both a right and a civic obligation to serve on a jury.

Americans believe in the jury system. According to a 2004 American Bar Association public opinion poll, 75 percent of the public would want a jury to decide their case if they were a participant in a trial. Despite such beliefs, courts around the country report serious problems with low response rates to juror summonses. Jury reform is necessary to reduce the burden placed on citizens who are called for jury service.

The Problem: Jury service in Texas can be inconvenient and unduly burdensome.

For example, if a Texan receives a juror summons for an inconvenient time, he or she may have to appear in court and request to be excused or ask for a deferral of service to another date, unless the court has adopted another procedure.

Texas law does not set a uniform term of jury service and jurors may be required to appear in court for several days or weeks, even if they are not selected to serve on a trial.

While Texas law prohibits a business from terminating an employee because he or she serves on a jury, it does not protect a citizen from other acts of retaliation, nor does it explicitly prohibit an employer from requiring an employee to use leave time to serve.

Most jurors receive just between \$6 and \$10 per day from the court for each day of jury service, an amount that has only slightly increased from the \$2 per day provided to jurors in 1866. Low juror compensation can be especially difficult on citizens selected to serve on lengthy trials.

A joint study by the Dallas Morning News and Southern Methodist University found that the number of citizens who merely ignore their summonses is increasing and has reached crisis levels. That study found that, in Dallas County, “at least 80 percent of the people summoned each week for jury duty disregard their summonses and refuse to participate in the system.” According to the Austin-American Statesman, in Travis County, only about a quarter of the 180,000 to 200,000 citizens summoned to jury service each year actually show up at the courthouse. The El Paso Times has reported that poor juror turnout actually required the delay of a murder trial. This trend has made it difficult to fill the jury box, increased courts’ administrative costs, and threatened the constitutional right to a representative jury. Moreover, when some jurors do not show up at the courthouse, the inconvenience of jury service unfairly falls on others.

Those who do show up to jury duty are often armed with excuses not to serve. Texas’s current law allows a judge or a judge’s designee to excuse a prospective juror from service for “any reasonable sworn excuse.” Those called for jury service, particularly professionals, may abuse this broad provision to avoid their civic responsibility.

The result may be a jury that is not representative of the community. The right to a fair trial of one’s peers and the right of all citizens to serve on a jury is at risk.

The Solution: The Jury Patriotism Act

The American Legislative Exchange Council, the nation's largest nonpartisan membership organization of state legislators, has developed model legislation, the "Jury Patriotism Act," to promote jury service by alleviating the burden and inconvenience placed on those called to serve. This model legislation has been endorsed by the Council of State Governments and is supported by the National Black Chamber of Commerce, the National Association of Manufacturers, the National Association of Wholesalers-Distributors, the Texas Association of Business, and the U.S. Hispanic Chamber of Commerce, among others.

The Burdens of Jury Service Would Be Reduced or Eliminated

Jurors would have the right to one automatic postponement of jury service with a simple and convenient method of rescheduling service to a more convenient time. Subsequent postponements would be available in the case of an emergency. Courts would also defer jury duty for an employee of a small business if another employee of the same business is summoned for service during the same period.

Citizens would not spend more than one day at the courthouse unless selected to serve on a jury panel. This "one-day/one-trial" system guarantees that a juror, if not selected for a trial, is dismissed from jury duty at the end of the day. It has proven to significantly reduce the length of jury service and the time an employee is absent from work. Jurors would greatly prefer the one-day/one-trial system over a longer term of service. The one-day/one-trial system is hailed by the National Center for State Courts as a "best practice." About half of state courts nationwide have adopted the one-day/one-trial term of service, including several courts in Texas, such as those in Dallas and Tarrant Counties. In fact, this system is credited to the Harris County court system, which adopted the shorter term of service in 1972. All courts in Texas should adopt this shorter term of service.

Those summoned to jury service would have greater employment protection. They would be protected from any adverse action on account of their response to a juror summons and could not be required to use leave time in order to serve.

An innovative "Lengthy Trial Fund" would help relieve the burden on jurors serving on lengthy trials. Jurors who do not receive their regular income and serve on such trials would be eligible for additional supplemental compensation from the fund (up to \$300 per day) after the tenth day of service. This fund would be financed through a minimal \$15 dollar fee paid by attorneys filing civil cases in state courts, and would not require an allocation of state resources.

All People Would Have the Opportunity and Obligation to Serve

All citizens should serve on a jury unless it would create a true hardship. Under the Jury Patriotism Act, prospective jurors would be excused only if they cannot obtain a substitute care giver, would incur costs that would have a substantial adverse impact on the ability to live or support their family, or would be unable to serve due to illness or disease. The court would grant excuses based on documentation supporting the need to be excused.

Providing one automatic postponement, adopting a one-day/one-trial system, strengthening employment protection, and making additional compensation available to those who serve on lengthy trials should significantly reduce the burden of jury service on citizens. In consideration of the additional flexibility of service, citizens should be deterred from ignoring a jury summons by an appropriate penalty and enforcement. The Act provides courts with the discretion to require no shows to complete community service for a period no less than if the citizen would have served, in addition to, or instead of, the \$100 to \$1,000 fine provided by current Texas law.



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For more information contact Kate Doner (512-320-0474 or kate@tcjl.com).

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