



## **Evolving Texas Justice Violates American Traditions**

*“All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.”*

Article I, Section 12,  
Bill of Rights, Texas Constitution

The current civil justice system in Texas bears little resemblance to the vision of our Founders and the fundamental human rights they enshrined in the United States and Texas Constitutions. Legislative “reforms” that began in 2003 under Governor Rick Perry’s reign effectively deny that remedy to “every person,” for the value of a Texan’s life today is measured by economic status, the right envisioned for all a privilege for the few.

That the civil justice system in this country, and, especially in Texas, is essentially inaccessible to many citizens, is established in the finding of a world-wide survey that ranks the United States lowest among 11 developed nations when it comes to providing its citizens access to justice and lower than some third-world nations in some categories. The survey results from the World Justice Project’s new “Rule of Law Index” showed that the United States ranks 20th of 35 nations in terms of access and affordability of legal counsel in civil disputes, below not only developed nations, but also such countries as Mexico, Croatia and the Dominican Republic. The most striking findings related to access to justice for ordinary people. Only 40 percent of low-income respondents in New York, Chicago and Los Angeles who had used the court system in the past three years reported that the process was fair, compared to 71 percent of wealthy respondents. This 31 percent gap between poor and rich litigants in the United States was the widest among all developed countries sampled.

**Harvard Law Professor Larry Tribe, appointed by the Attorney General as senior counselor in charge of a new Access to Justice Initiative, stated that “as a nation, we face nothing short of a justice crisis.”**

In Texas, one of the most notable statutory changes mandated in 2003 and championed by Governor Perry capped non-economic damages that winning plaintiffs of malpractice suits can receive against

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## **Jury Verdict Obtained by Alton C. Todd Is Affirmed by 12th Court of Appeals**

On February 3, the 12<sup>th</sup> Court of Appeals District in Tyler affirmed the jury verdict obtained by Alton C Todd on behalf of Billie Joe Burnett against Pilgrim’s Pride Corporation and Jack Alton Sherman. Todd was assisted by referring counsel Julia Hatcher, who, with Attorney Mark Aronowitz, handled the appeal. Appealed from the 159<sup>th</sup> Judicial District Court of Angelina County, the case involved a motor vehicle accident in which Mr. Burnett was severely injured when his truck collided with a Pilgrim’s Pride tractor-trailer that had inadequate reflective tape.

On October 13, 2004, Burnett, 41, a heavy equipment mechanic, was driving south before dawn on Highway 36 in Lufkin near the intersection of FM 326 and Old Ewing Road when Jack Alton Sherman, driving a Pilgrim’s Pride tractor-trailer loaded with chickens, began to make a left turn onto FM 326 in the northbound lane. Burnett’s truck and Sherman’s tractor-trailer collided. Sherman testified that he did not see Burnett’s vehicle when he began the turn and, when he saw the truck come over the top of a hill, believed that he had enough distance to complete the turn. Burnett stated that he saw the truck but could not see that it had a trailer because he was focused on the cab portion of the tractor-trailer, which obstructed the roadway, and its blinding headlights. He believed that Sherman’s vehicle had already completed the turn before he saw the trailer and stated that he could not initiate his brakes in time to avoid a collision. Evidence showed that he did initiate his brakes and unsuccessfully tried to veer to the right just prior to impact.

The plaintiff presented evidence that the tractor-trailer was equipped with reflective tape but that it was obscured by chicken feces. Sherman testified that he did not clean the reflective sheeting on the morning of the accident. Kenny Clifton, former regional fleet safety manager and member of the Internal Accident Review Board at Pilgrim’s Pride, testified, after

examining photos, that the trailer could have had more tape and probably should not have been on the road. Jerry Adams, shop manager responsible for maintaining the tractor-trailers, testified that Pilgrim’s Pride did not have a specific safety policy that required drivers to make sure the reflective tape was in good condition.

Evidence was presented showing that both Burnett and Sherman had vision problems, and testimony from accident reconstructionists held that both parties contributed to the accident and that both could have taken actions to avoid it.

The jury found that Burnett, Pilgrim’s Pride and Sherman were negligent and apportioned 20 percent fault to Pilgrim’s Pride, 45 percent to Sherman and 35 percent to Burnett. The jury awarded the plaintiff \$1,084,390.22 in damages. After apportioning the responsibilities of the parties, the trial court reduced the amount of damages in its judgment to \$704,853.64.

## **Texas Supreme Court Rejects Hertz Appeal**

A substantial verdict obtained by Jeff Todd and Clint McGuire in 2010, appealed by Hertz Equipment Rental Corporation and rejected in appellate court, was also upheld by the Supreme Court of Texas in December 2011.

In the case of *Kyle Barousse v. Hertz*, tried in Harris County, Judge Patricia Hancock ruled in favor of the plaintiff, who was discharged by Hertz after filing a workers’ compensation claim in good faith. The ruling, awarding Barousse full compensatory and punitive damages, was more than 14 times the pre-trial offer. The appellate court supported the trial court’s finding that Hertz violated the Texas workers’ compensation anti-retaliation statute in terminating Barousse’s employment, and Hertz filed a petition with the Supreme Court of Texas to overturn the verdict. The Supreme Court rejected the request, upholding the verdict in favor of the plaintiff.

## Lawyer's Lesson Strengthens Belief

Everyone, I think has a pet philosophy. The following example of civil law reaffirms one of mine: *what goes around comes around.*

A little girl was involved in a major automobile accident. Considering her injuries, it was surprising that she survived. A lawsuit was filed on her behalf, and, after a thorough investigation, it was determined that available insurance coverage was only \$40,000. Medical bills alone would exhaust this amount. Although the hospital was willing to accept \$18,000, and the lawyer reduced his fee, after payment of these expenses, the net benefit to the child would be less than \$10,000.

As is common when a minor is involved, particularly when injuries substantially outweigh the recovery, an in-court hearing is required for the judge to approve any settlement. On the morning of the hearing, the lawyer's thoughts kept returning to the blessings of his life and to his own beloved children, the beneficiaries of those blessings.

He knew then the he would not/could not take any payment from the family of this impaired child. The lawyer waived his \$12,000 fee. After the hearing, he returned to the adjacent courtroom where he had started a trial earlier in the week. That afternoon he received a call that a case he had referred to another lawyer had settled. He was very surprised at the amount of settlement; his fee would be \$67,000.

The following Monday the jury returned its verdict in the case he was trying. The defendant had offered \$0. The jury's unanimous verdict was for \$4,200,000. If paid, the lawyer's fee would be \$1 million.

Less than three days after waiving a \$12,000 fee, he had been awarded \$1,067,000. The fees have not all been funded and may never be, but he's one court ahead. That's a good place to be.

Alton C. Todd

## Evolving Texas Justice ....

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doctors at \$250,000 and \$750,000 against hospitals, a cap not indexed to inflation and worth less each year. It was a legislative move unprecedented in its effect on the ability of Texas patients to pursue their right to due process, making it financially impossible for many due to the high cost of retaining medical experts, a major litigation expense.

The infamous HB 4 of that legislation also limited plaintiffs' rights to trial by jury if they do not accept a settlement offer and win a jury verdict, holding them liable for the defendant's litigation costs, including attorney fees, if the difference between the judgment and the offer is more than 20 percent.

The "responsible third party" application of HB 4 initiated an agenda useful only to defendants, facilitating reduction of their own liability by pointing a finger at some empty entity, bankrupt company, or a party from whom the plaintiff can't recover. A jury may err in thinking it is helping the plaintiff by apportioning liability to this "responsible third party," but every percentage point of fault allocated to that party is a percentage point not assigned to the defendant.

**Not to be outdone by the far-reaching legislation of 2003, in 2011, the corporate-supported crafters of HB 274, in a move to further slant the scales of justice against victims, removed limits on the legal fees winning plaintiffs could be forced to pay if they reject a settlement offer and the judgment falls below 80 percent of the offer.**

The effect of HB 274, making plaintiffs potentially responsible for defendants' legal fees, further stacks the deck in favor of insurance companies and powerful corporations. Injured intimidated parties are forced to make a decision before evidence of wrongdoing can even be presented and tempted to accept a low settlement offer rather than risk receiving nothing.

The prevailing legal system in Texas, under the guise of "tort reform," is an un-American concept, contributor to a shameful international ranking of this country in providing access to justice, and an abomination of the open courts envisioned by our Founders.



Megan McGuire and First-Place Trophy

## MEGAN MCGUIRE IS RODEO ART WINNER

Megan McGuire, 5<sup>th</sup> grader at Kubacak Elementary in Santa Fe ISD, was named the elementary school champion in the Houston Livestock Show and Rodeo Elementary Division Art Show. Megan is the daughter of Natalie McGuire and Attorney Clint McGuire of The Law Firm of Alton C. Todd.

From more than 300,000 pieces of artwork submitted from students across Southeast Texas, Megan's oil pastel, "Attitude Adjustment," was one of fewer than 700 paintings, drawings and sketches awarded best in show, gold medal or special merit prizes. All of the artwork was inspired by Western culture, history or heritage. Megan's picture is of a cowboy wrestling a steer.

When asked if she was surprised at winning the grand prize, Megan said, "I had not a clue."

A straight A student, Megan has won the Elementary Best of Show Award for Santa Fe four times, as well as a scholarship to a week-long summer camp at Glassel Children's Museum in Houston. At a very young age, she showed artistic abilities and, at five and a half, began group lessons. Creative and expressive, she dances over six hours a week, competes in dance competitions, likes to sing and is learning piano. Megan loves animals, has raised rabbits for pets for many years and volunteers with an organization that offers dogs for adoptions. Right now, the 10-year-old over-achiever thinks she wants to go to Texas A&M and become a vet.

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**ALTruism**  
*April hath put a spirit  
of youth in everything.*

## JURY RULES IN FAVOR OF BNSF EMPLOYEE

On December 15, 2011, Attorneys Clint E. McGuire and Jeffrey N. Todd obtained a favorable jury verdict on behalf of Mark Jordan, BNSF Railway engineer, for injuries sustained while on the job.

On December 5, 2007, the plaintiff was onboard a stationary locomotive in the Clear Creek rail yard in Houston when it was struck by another train, traveling at approximately 10 mph. Jordan fell to the ground, injuring his neck and back. Despite his injuries, he did not seek medical treatment until 27 days after the collision and did not miss any work. He completed a six-month course of physical therapy, after which the pain gradually returned, and he began pain management treatment in September 2011.

Jordan, who had a 15-year history of neck and back problems, sought unspecified compensatory damages for future medical expenses and past and future pain and suffering and physical impairment. His suit against BNSF claimed that a BNSF employee negligently switched the train onto his track, causing the collision.

BNSF did not accept responsibility until the day of trial and further argued that the plaintiff sustained no new and permanent injury as a result of the collision. The Harris County jury awarded Jordan \$98,000.



New Theta Kamilah Todd and her father Alton C. Todd enjoy Kappa Alpha Theta Dad's Weekend in late February.

## KAMILAH TODD PLEDGES KAPPA ALPHA THETA FRATERNITY

Dallas Cowboys cheerleader Kamilah Brett, a freshman at Southern Methodist University, was initiated into Kappa Alpha Theta on March 3.

When Kappa Alpha Theta was founded in 1870, less than one percent of all college-aged women in the United States were enrolled in colleges and universities. Like the very few women who did choose to attend college, Theta's founders were also met with hostility and harassment. Since its

## Wishes Come True for Lucille Todd

One of Lucille Todd's two wishes, after her granddaughter Kamilah became a Dallas Cowboys cheerleader, was to attend a Dallas Cowboys game, and that wish came true, thanks to her son Alton and daughter-in-law Nari Todd, last Thanksgiving when they accompanied her to Dallas and celebrated together the Cowboys' 20-19 defeat of the Miami Dolphins.

Her second wish, sent to Jeremy Bloom, founder of *Wish of a Lifetime*, was to return to Hamilton, TX, where she and her late husband Ruel had lived for 45 years on a farm six miles from the city. There, she wanted to share in a Bible study class with former classmates who had, without fail, met every Tuesday at the home of Lynn Plagens. At times there were as many as 20 women from different denominations participating in discussions based on materials created by Kay Arthur, international Bible teacher and award-winning author of Christian books.

On March 16, Lucille and Karen Hawkins, a friend who had helped care for Ruel, set out from Webster for Hamilton, taking turns driving on the 286-mile trip. Lucille's second wish had been granted; the long awaited reunion was about to take place.

At the home of her friend Lynn, 10 members of the original group met that

weekend, all sitting at the same table in the same seats they had always occupied. Although invited, Kay Archer was unable to attend but sent an autographed devotion book and a nice note to Lucille.



Lucille Todd, Thanksgiving Day, 2011

On Sunday, March 18, Lucille, as honored guest, sat in Calvary Baptist Church in Hamilton, where she and Ruel had been charter members. The Todds' longtime friend Riney Jordan, inspirational speaker and motivational humorist, asked her if she would like to speak, but Lucille declined. Instead, she listened to the impressive service by the young minister and looked lovingly at the stained glass windows, a lasting reminder of her husband's designated tithe so many years ago.

Lucille's second wish came true because of Colorado native Jeremy Bloom, two-time Olympic skier and former NFL football player who launched the non-profit *Wish of a Lifetime* in 2008 in living honor of his grandmother. The purpose of the foundation, known officially as Jeremy Bloom's Wish of a Lifetime (JBWOL), is to celebrate and enrich the lives of seniors by helping them to realize one thing in life that they have wanted to experience. Accommodations and meals during Lucille's weekend in Hamilton were covered by JBWOL.

"I enjoyed it so much," Lucille says of this memorable March reunion, "but there's something about getting old (she is 92 and was married to Ruel, who died on May 27, 2009 for nearly 71 years)—you don't get excited so much." She is beyond being thrilled; she is *thankful*.

Before Lucille and Karen left, they went back to her Hamilton home and sat for awhile in the front porch chairs of the farmhouse where she and Ruel had so often looked across the vast expanse of their land and shared so many stunning sunsets.

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## *Welcome, Major James Todd!*



Cooper (L) and Tyler (R), 5 and 7 year-old sons of Attorneys Jeff and Dana Todd, and baby brother Major James, born February 21. Major is the 6th grandchild of Alton C. Todd.

## **Jury Rules Work Stress Led To Fatal Heart Attack**

Alton C. Todd obtained a November jury finding in Galveston County that William Allison's death was a work-related event. A chemical plant operator, Allison, on November 25, 2008, died at his home in Deer Park following cardiac arrest. His widow's claim with his employer's workers' compensation carrier for death benefits was denied on grounds that the death was not work-related.

While the outcome of the contested case hearing was favorable to the plaintiff, it was reversed by the appeal panel. Mrs. Allison then sued the carrier to appeal the administrative decision.

Allison had worked for his employer for 30 years before reductions in force led the company to require all outside operators to join a volunteer fire brigade, requiring fire training. On November 23 and 24, 2008, Allison attended mandatory fire training. On November 25, he suffered a thrombus or clot, causing an

occlusion and died an hour later.

According to Allison's widow, he was a type II diabetic, hypertensive, and his doctor had recommended that he not be required to attend fire training. The plaintiff contended that the physical stress from the training caused the plaque rupture that led to Allison's fatal clot. The defense did not dispute the cause of death but denied that the fire training was responsible for the rupture but rather that the rupture was a natural progression of Allison's heart disease.

### **CLOSING STATEMENT**

*We value your trust and your referral.  
Thank you for the opportunity to represent  
your interest and for recommending  
THE LAW FIRM OF ALTON C. TODD.*

### DO AS I SAY, NOT AS I SUE

## **HYPOCRISY IN U.S. CHAMBER Puts Profits Before People**

Reports released by the American Association for Justice offer striking examples to support the U.S. Chamber of Commerce's "one rule for corporations, another rule for everybody else" motto. The Chamber, considered one of the most aggressive litigators in Washington, D.C. in lawsuits to protect its corporate financiers, through the Institute for Legal Reform (ILR), also advocates for legislation to make it more difficult for individuals harmed by negligent corporations to access the civil justice system.

The blatant hypocrisy of the U.S. Chamber and ILR's corporate board members is evidenced in the liberal use of litigation by the multinational corporations that finance ILR. Listed among the top ten ILR hypocrites, Caterpillar sued Disney because it considered the depiction of bulldozers in the movie *George of the Jungle 2* "overvillainous". FedEx, also on the hypocritical list, sued a man for making a chair out of FedEx boxes.

On one hand, the Association for American Justice reports, "the Chamber spends an unrivaled amount of money lobbying to restrict access to the courts for everyday Americans. On the other, it files copious lawsuits and briefs in defense of the likes of AIG, Walmart, Firestone and a slew of pharmaceutical and insurance companies."

At the heart of this double standard is the Chamber's corporate creed that profits come before people. That creed keeps defective products on the marketplace, denies individuals' insurance claims, dumps harmful pollution, and justifies a belief that courts are intended for businesses, not for individuals seeking accountability.