SUMMER 2024

TLR ADVOCATE

TEXANS FOR LAWSUIT REFORM: MAKING TEXAS A BEACON FOR CIVIL JUSTICE IN AMERICA

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IN THIS ISSUE

OUR MISSION

Texans for Lawsuit Reform is a volunteer-led organization working to maintain fairness and balance in our civil justice system through political action, legal, academic and market research, and grassroots initiatives. The common goal of our more than 18,000 supporters is to make Texas the Beacon State for Civil Justice in America.

1233 West Loop South, Suite 1375
Houston, Texas 77027

www.tortreform.com
tlr@tortreform.com

@lawsuitreform

Leg Ad Pd for by Texans for Lawsuit Reform
Lee Parsley, President
919 Congress, Suite 455, Austin, TX 78701

Looking to the Future

By Lee Parsley, TLR President and General Counsel

This year marks TLR's 30th anniversary!

It's hard to believe it has been three decades since a group of business leaders came together to address the most pernicious issue facing Texas' economy—abusive and unnecessary litigation.

And while the environment and challenges we face today have evolved from those we faced 30 years ago, one thing remains constant: We must continue to work to keep Texas' legal system fair and efficient.

Today, Texas courts are regularly returning enormous verdicts that are not warranted by the facts, almost always because of errant or biased judging. The frequency and irrationality of these "nuclear verdicts" have a "circling-the-drain effect" on Texas' lawsuit environment. Big verdicts make insurance companies risk averse, causing them to settle meritless cases more frequently and for more money. Trial lawyers use that settlement money to buy ads to generate more lawsuits. More lawsuits result in even more settlements, and the cycle perpetuates itself.

Commercial vehicle operators disproportionately suffer nuclear verdicts and increased litigation, but they are hardly alone. **Today, any person or company perceived to have "deep pockets" is a target for an economically disastrous personal injury lawsuit—for even the smallest event.** And all Texans are paying the price as this unfair and unpredictable system increases the cost of goods.

TLR's three-decade playbook of legislative advocacy and political activity will remain a key to keeping the Texas Miracle alive. We are taking steps to ensure TLR can continue to fight against abusive lawsuits and for a fair and predictable legal system well into the future.

While TLR's co-founders and leaders—Dick Weekley, Dick Trabulsi and Hugh Rice Kelly—remain active with the organization, after 30 years, we are implementing a long-planned succession strategy to preserve and build on TLR's 30-year record of success.

I have been named president of TLR and assumed administrative tasks formerly handled by Dick Trabulsi. I will lead TLR's legislative advocacy efforts, with the collaboration of TLR's staff and lobby team. Mary Tipps, Avery Harrington and I have also started handling some fundraising, thus taking a little of Dick Weekley's load.

Dick Weekley, as chairman, will continue to spearhead TLR fundraising, manage many of TLR's longstanding relationships, and work to build new alliances with key business leaders across Texas. Dick Trabulsi, as chairman emeritus, will continue to advise TLRPAC and help with legislative advocacy. And Hugh Rice Kelly, as general counsel emeritus, will continue to provide wisdom and advice to TLR's legal team.

Whether you've been with us for 30 years or are just joining the ride, thank you for standing with TLR in the fight to keep Texas' legal system fair and efficient. Together, we will make the next 30 years as successful as the first. ■

Chairman's Note

By Richard W. Weekley, TLR Chairman

When we started TLR 30 years ago, we had one goal in mind: fixing the toxic lawsuit environment that was crushing job creators and wrecking the Texas economy. And over the past three decades, we have developed a playbook for efficiently and effectively passing targeted reforms to fix abusive lawsuits and make our courts fairer and more efficient.

Today, TLR remains laser-focused on civil justice issues, which includes traditional tort reform efforts, a stable and qualified judiciary, measures to achieve fair and efficient court procedures, and involvement in any bill that creates or expands a cause of action. Additionally, our board has voted to expand our portfolio to include administrative litigation and regulatory reform, which we intend to approach thoughtfully and in collaboration with allies.

And while the TLR staff is hard at work on civil justice issues, our network of volunteers across the state—including myself and many others—have separately begun to tackle other issues that impact quality of life and the strength of our state's economy.

For example, last session we worked closely with lawmakers to implement a high-quality, gold standard curriculum for students in our K-12 public schools, including $731 million in funding to create the curriculum and associated training. Since 81 percent of Texas public school children are taught curriculum that is below grade level, it's no wonder they often struggle on standardized tests, even while getting good grades in class. House Bill 1605 ensures every Texas school district has access to high-quality, grade level curriculum that is also consistent with Texas law and Texas values.

Taking a page from TLR's playbook, we put together a strong team to advocate on this issue and built grassroots support from Texans across the state. Thanks to the Texas Legislature, we have enacted real changes to our public school curriculum that will ensure Texas children receive the education they need to competitively enter higher education, the workforce or the military.

And so, while TLR itself continues to focus on its mission, its three decades of success have allowed its leadership to engage on other issues of importance to all Texans, which I and others in the TLR family intend to continue to do in the coming years. ■

Texas Supreme Court Preliminarily Approves Rules for Business Court and Fifteenth Court of Appeals

2023's House Bill 19 and Senate Bill 1045 tasked the Texas Supreme Court with adopting procedural rules for the newly created business court and Fifteenth Court of Appeals. The Supreme Court Advisory Committee (SCAC) tasked a subcommittee—chaired by Marcy Greer of Alexander Dubose & Jefferson—with creating the procedural framework for both courts. Justice Emily Miskel of the Third Court of Appeals and Robert Levy aided this effort tremendously. A complete transcript of the SCAC's Oct. 13, 2023, meeting discussing the recommendations may be found on the Texas Judicial Branch website.

Drafting the business court rules was the larger of the tasks, requiring the subcommittee to determine what rules were necessary, where they should go, and how to best craft them. The proposed changes span the Texas Rules of Civil Procedure, Code of Judicial Conduct, and Texas Rules of Judicial Administration, and include proposals for removing and remanding cases to and from the business court, issuing written opinions, and the fee structure.

Amendments for the Fifteenth Court of Appeals are less expansive, only addressing Rule 25 (perfecting appeal), Rule 32 (docketing statements), and Rule 39 (oral argument) of the Texas Rules of Appellate Procedure. The proposal also creates a new Rule 27a (transfers between intermediate appellate courts).

The Supreme Court is considering public comments on the rules and will issue an order finalizing them now that the comment period has ended. The new rules and amendments will take effect on September 1, when the new courts come online. ■

Reflections

By Richard J. Trabulsi Jr., TLR Chairman Emeritus

TLR was recently approached by business leaders in California for advice on how that state could accomplish much-needed tort reform in the way Texas has over these past three decades. We get similar requests regularly, which has caused me to reflect on TLR's origins and the reasons we have been successful and durable as an organization.

Rights are inextricably linked with—and protected by—duties. Liberty cannot be separated from responsibility, nor freedom from obligation. This was a guiding principle of Thomas Jefferson's political philosophy. In the first meeting called by TLR Founder Dick Weekley, he posited: "Our civil justice system is a disgrace. We're a free society. Why don't we quit complaining and do something about it?" Many of us joined Dick in forming Texans for Lawsuit Reform to "do something about it."

Recognizing that the benefits of liberty require an obligation to engage in public policy, we worked closely with elected officials to put in place the most comprehensive reform of a state civil justice system in our nation's history.

Volunteer leadership and active participation distinguish TLR. I respect the trade associations and public policy think tanks that engage in advocacy in Texas, but TLR is unique in the degree to which business, professional and community leaders actively participate in developing our legislative agenda and advocating for our proposals.

Good public policy requires electing good officeholders. You can't accomplish good public policy without elected officials who are principled, thoughtful, honest and dedicated to the public good. TLRPAC actively engages in legislative races to support candidates who share our philosophy of law and will perform their duties conscientiously and competently. We care about a candidate's philosophy *and* character. Policy considerations change over time, but character and principle are constant.

Approach advocacy and policymaking comprehensively. The TLR Foundation does exhaustive research that informs policymakers on issues and often forms the basis for TLR's legislative proposals. TLR itself works closely with legislators to craft bills addressing those issues and build the necessary support to get the bills to the governor's desk. Passing legislation—especially bills opposed by powerful interests like the plaintiffs' bar—is demanding work and requires serious efforts by lawmakers and parliamentary leaders. Fortunately, TLR's proposals have been supported by the governors, lieutenant governors and House speakers with whom we have worked. We have also worked with committee chairmen and bill authors who skillfully shepherd bills through the legislative labyrinth.

Be true to your mission. This was a persistent refrain of TLR co-founder Leo Linbeck Jr., who was a man of uncommon wisdom. Law is the essential building block of our republic. It is an expansive topic. TLR has been laser-focused on the law itself, allowing us to gain the respect of the Legislature on matters of law. Other associations have a multitude of issues—taxes, transportation, budget allocations and myriad other matters of interest to them. TLR is more concentrated, allowing us to build expertise and credibility.

Do not overreach. We identify a problem in the law that undermines its efficacy or is having a perverse impact on our society or economy. We then craft a solution that is precisely tailored to fix that problem. We have always maintained that our courthouses must be fair to all parties to a litigated dispute—after all, none of us knows when we might need to access the courts to redress wrongs, be compensated for injuries or defend against a lawsuit. No TLR-advocated statute has been repealed or significantly revised, nor ruled unconstitutional.

Stay vigilant. The work for a fair and predictable justice system never ends. In Texas today, the biggest problem is not the law itself but the many judges who ignore the law or deliberately distort it to achieve their own view of a "just" outcome. Therefore, TLR is increasingly focused on the judiciary.

This advice is easy to give, but not so easy to execute. Good luck, California. ■

The Public Nuisance Lawfare Problem

By Sen. Mayes Middleton (R, Galveston)

When the Left can't pass laws imposing new fees and taxes, taking private property, or implementing regulations and other ideas that kill jobs and free enterprise, what do they do?

They resort to lawsuits.

This desire to regulate through litigation explains why "public nuisance" lawsuits have become a convenient catch-all tactic for activists who are unable to make a *lawful* activity—like oil and gas production—*unlawful* through the legislative process.

As of this writing, about 30 public nuisance lawsuits have been filed against oil and gas companies across the country. In all cases, plaintiffs seek billions of dollars in damages in the hopes of bankrupting the oil and gas industry and ending production and use of fossil fuels.

The U.S. Supreme Court has declined to move these cases out of state and into federal court, thus putting state judges and liberal activists firmly—and inappropriately—in a policy-making role that threatens America's energy independence.

Plaintiff's attorneys have taken this signal from the Supreme Court as carte blanche to apply public nuisance lawsuits to any activity or product they believe is problematic—and no industry is immune.

For example, the state of New York recently sued PepsiCo, claiming its packaging creates a public nuisance because it allegedly shows up in river litter more than any other company's. But litter and pollution are already illegal under state and federal laws, and those statutes are a more efficient and appropriate way to address these problems. The difference is that statutes typically don't allow activists to bankrupt companies or leftist lawyers to get rich, while lawsuits do.

Last year, several major U.S. cities sued Hyundai and Kia for manufacturing cars that the cities claim are too easily stolen, thus allegedly creating a public nuisance of vehicle theft. So, rather than using existing laws to prosecute criminals who steal cars, these cities are blaming the manufacturers and seeking millions of dollars in damages. A municipality's soft-on-crime policies certainly aren't the car manufacturers' fault.

This entire litigation enterprise is fueled by a lawyer-created misunderstanding of the centuries-old public nuisance doctrine that developed in English common law. These lawyers have convinced willfully ignorant courts that anything can be a "public nuisance" and give rise to a lawsuit for damages if any group of people finds any lawful activity bothersome.

In truth, a common law lawsuit alleging a public nuisance was used for one very narrow purpose—to end an activity that was interfering with the public's access to government-owned property. It could not be used to recover damages and it did not apply to products.

Opponents of efforts to rein in abusive public nuisance lawsuits use subterfuge and confusion to their advantage. We saw this time and again in committee hearings on the bill I authored last session addressing abusive public nuisance lawsuits.

They conflated public nuisances with other kinds of nuisances, then asserted that my narrow bill to fix this problem would have unintended consequences, including allowing criminal activity to flourish. This is simply false.

Other kinds of nuisance actions exist in the law to address real societal problems, including crime. Texas statutes refer to "public health nuisances," "common nuisances," and nuisances related to unincorporated areas. Texas law, in fact, lists 28 specific actions that constitute a "common nuisance," such as human trafficking and maintaining a drug house.

A bill returning public nuisance lawsuits to their historic purpose will do *nothing* to impede local prosecutors from using common nuisance lawsuits to quickly stop criminal activities, as they appropriately do all the time.

The 2023 bill would have created guardrails to help courts determine products and activities to which public nuisance lawsuits do not apply, thus preventing the end-around of the legislative branch by courts and activists that occurs every time a lawsuit is used to regulate society.

It's a disturbing trend to see governmental entities suing private companies and individuals for lawful activities as a bypass of the Legislature. If left unaddressed, this issue will continue to get worse in Texas, risking countless jobs, and I intend to revisit it in the 89th Legislative Session in 2025. ■

Recapping Hail Litigation

By Chairman Greg Bonnen (R, Friendswood)

In 2017, I authored a bill to rein in storm-chasing plaintiff lawyers. In analyzing litigation trends after the bill's passage, it appears that, for the most part, the effort was successful. But it may be time to touch-up the 2017 law.

Dolly and Ike—The Origins of Storm Chasing

On July 23, 2008, Hurricane Dolly made landfall at South Padre Island. Dolly did a fair amount of property damage, resulting in the submission of numerous insurance claims to the Texas Windstorm Insurance Association (TWIA)—a quasi-governmental entity that is the insurer of last resort for properties along the coast.

About eight weeks later, on Sept. 13, 2008, Hurricane Ike made landfall in Galveston, damaging or destroying thousands of homes and businesses along the Texas coast. Again, claims poured into TWIA.

Hurricanes are not unheard of, but they are relatively uncommon in Texas, and so there are many years in which TWIA receives relatively few claims. As a consequence, TWIA only has a few adjusters on its staff. The back-to-back hurricanes inundated TWIA with claims in 2008 and 2009, and—without an adequate team of adjusters—it quickly fell behind in its obligation to evaluate claims. Consequently, TWIA violated the Prompt Payment of Claims Act in claims submitted by thousands of coastal property owners.

The Prompt Payment of Claims Act allows a property owner to recover a penalty and attorney's fees from his or her insurer when a claim is not timely evaluated and paid. This applies whether the claim is a day late or a dollar short, or a year late and thousands of dollars short. The ability to recover attorney's fees in lawsuits against TWIA was irresistible to some attorneys, who actively recruited clients after the 2008 hurricanes. The mountain of litigation that followed the two storms virtually bankrupted TWIA.

In 2011, the Legislature revised TWIA's claims settlement statutes to prevent future hurricanes from creating litigation storms under the Prompt Payment of Claims Act, thus helping restore TWIA to financial solvency. But the 2011 law could not put the genie back in the bottle. The storm-chasing lawyers had perfected a model to monetize natural disasters.

HB 1774—Storm Chasing Meets the Texas Legislature

Effectively shut down in TWIA litigation, these storm-chasing lawyers took their model to the private market and started chasing hailstorms and suing private insurers in the 2010s. The lawyers worked with cooperative public insurance adjusters to solicit clients following hailstorms across Texas, but the issue was especially pervasive in the Rio Grande Valley.

Existing laws requiring a pre-suit notice were ignored and lawsuits were filed, in many instances, before the insurance company had even received a claim. The amounts alleged to be owed under the policy were always vastly inflated, because, if the lawyer could convince a jury that just $1 was unpaid, then the Prompt Payment of Claims Act would allow recovery of the plaintiff's attorney's fees from the insurance company.

As a result of this lawyer-driven activity, the number of storm-related lawsuits went from a few hundred a year statewide to almost 12,000 annually. Insurance availability collapsed in some areas of Texas, while monthly premiums and deductibles skyrocketed for homeowners across the state.

In response, the Legislature passed my bill, House Bill 1774 in 2017, which requires a property owner to give an insurance company at least 60 days' notice of an intent to sue, specifically stating the amount owed under the insurance policy. Failure to give notice or the inclusion of a significantly inflated amount can result in a reduction in the attorney's fees the insurer can be forced to pay the property owner's attorney.

After HB 1774 became law, the number of storm-related lawsuits fell dramatically, almost to its historic level, and the availability of insurance increased. But the enforcement of HB 1774's provision limiting recovery of attorney's fees has chaffed storm-chasing attorneys and spawned recent appellate court decisions—both helpful and unhelpful.

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Rodriguez—Encouraging Alternative Dispute Resolution

In *Mario Rodriguez v. Safeco Insurance Co.*, a property owner invoked a dispute resolution process found in most insurance contracts called "appraisal," which is intended to be an expert-based process, not an attorney-driven one. The property owner and insurance company hire experts to evaluate the claim and come to a decision about the amount owed. Then the insurance company should pay the amount owed, unless the loss is not covered by the policy.

In *Rodriguez*, the appraisal process determined that the insurance company owed $32,448, which it quickly paid. It also paid a $9,458 penalty under the Prompt Payment of Claims Act. Rodriguez pursued a lawsuit nonetheless, seeking recovery of attorney's fees, and the case escalated all the way to the Texas Supreme Court.

The court's decision in *Rodriguez* resolved a split among lower courts, interpreting HB 1774 to foreclose the award of attorney's fees in this situation, stating: "[W]e conclude that [HB 1774] prohibits an award of attorney's fees when an insurer has fully discharged its obligations under the policy by voluntarily paying the appraisal amount, plus statutory interest, in compliance with the policy's appraisal provisions."

The Texas Supreme Court's correct interpretation of HB 1774 in *Rodriguez* appropriately encourages the use of a quick, non-judicial dispute resolution process and discourages unnecessary litigation.

Westchester and Combs—Lawyers Look for a Loophole in HB 1774

Some storm-chasing lawyers still hope to employ their tried-and-true methods to monetize weather-related insurance claims.

HB 1774 requires the pre-suit notice letter to state "the specific amount alleged to be owed by the insurer on the claim for damage to or loss of covered property." This provision ties to a statutory formula providing for a proportional reduction in a plaintiff's lawyer's attorney's fees when an inflated demand for payment is made.

If, for example, the pre-suit demand is twice the amount a judgment ultimately awards, then the plaintiff's attorney's fees are cut in half. If the demand is five times the judgment, attorney's fees cannot be awarded. But if a demand proves to have been too low, there is no effect on the award of attorney's fees.

The idea behind HB 1774 was to encourage legitimate demands and discourage inflated ones made solely to augment litigation. But some lawyers have developed a theory that HB 1774's requirement for the insured to state the amount owed under the policy means that the insured's lawyer can literally state any sum of money and satisfy the statutory requirement.

These lawyers send a pre-suit notice letter claiming a random, but modest, amount of money is owed under the policy. This allegedly satisfies their obligation under HB 1774 and insulates against the reduction of attorney's fees when a judgment is signed. Then, the next sentence in the demand letter states that the insured will not actually accept that amount of money in settlement of the dispute. But the very idea of a pre-suit notice, of course, is to give the prospective defendant the ability to pay a claim and avoid a lawsuit.

So far, Texas courts are split on whether this "have your cake and eat it too" tactic works.

In *In re Westchester Surplus Lines*, the Amarillo court of appeals held that a pre-suit notice letter is insufficient under HB 1774 if it equivocates on the amount owed to the plaintiff. Thus, simply throwing out a sum of money, while disclaiming a willingness to actually accept that amount in full payment of the claim is insufficient.

But in *Donald Combs v. Allstate Texas Lloyds*, a federal trial court in Houston found the opposite, ruling "The statutory language does not mandate that the notice letter contain a fixed and final total dollar sum allegedly owed by the insurer."

The *Westchester* case is currently pending before the Texas Supreme Court. If the court decides to hear it, its decision will presumably resolve the conflict. Otherwise, a clarification of the statute will be warranted. ■

When the Texas Citizens Participation Act Goes Wrong

By James Holmes, Holmes PLLC

My first encounter with the Texas Citizens Participation Act (TCPA)—also known as the anti-SLAPP statute—began in 2023, when I purchased a large lot near downtown Dallas for future residential development. Dallas code enforcement officers advised me on how best to clean up the lot and keep it safe. Following this advice, I hired workers to remove trash, mow down grass and weeds, install a chain link fence, and remove scruffy hackberry trees that were providing shade to trespassers who often used drugs.

As this work commenced, my crews told me that onlookers would often gather, make negative comments, take photographs and videos, and generally make the workers feel threatened and unwelcome. One particularly troublesome woman would walk onto the lot, videotape the work and accost the crews.

The work on the property continued until Sept. 6, 2023, when this woman trespassed onto my lot, obstructed, videoed and harassed my workers, and called the Dallas Police Department.

My research later revealed that she was a tenant at a next-door property who frequently video records herself trespassing on East Dallas construction sites, rails against the work being done, and encourages her social media followers to steal materials from or vandalize sites.

On my property alone, she photographed herself nude, holding a human skull. She also wrote a manifesto calling me a "rapist." On Facebook, she encouraged others to bring guns to my property and to use violence against developers like me.

By September 7, my lawyers had sued this woman for trespass, private nuisance and business disparagement—not for her complaints about work on the lot or for her attacks against me. They quickly prepared a summary judgment motion seeking damages and injunctive relief, and initiated discovery to learn more about her tortious conduct.

In response, the woman's attorney filed a bare-bones statement asserting that she had a TCPA-based right to complain and take action against the work on my property, and that my lawsuit should be dismissed. The motion contained no reference to the TCPA, no case law and no substantial arguments. But it immediately stopped all discovery, pursuant to the statute's Section 27.003(c), and threatened to force me to pay her attorney's fees.

The Dallas County District Court—being fully aware of her tortious, aggressive pre-lawsuit conduct—denied the motion to dismiss and ordered her to pay me more than $17,000 in attorney's fees.

Shortly thereafter—and just one day before a hearing on my summary judgment motion—the woman sought an interlocutory appeal pursuant to the TCPA's Section 27.008.

Now, a new attorney has transformed the woman's bare-bones TCPA dismissal motion into a 66-page appellant's brief containing arguments and authorities not previously presented to the district court. The case is now pending before the Dallas Court of Appeals.

Unfortunately, cases highlighting the realities of TCPA litigation and the need to rein in its suspension of discovery, attorney's fees threat and interlocutory appeal have become the rule, not the exception.

According to attorney Mark Walker of El Paso, TCPA dismissal motions have created millions of dollars in unnecessary costs, because, as written, the TCPA can be applied to almost any commercial or business dispute.

Walker's analysis finds that, despite its well intentioned beginnings, a decade into the TCPA's existence, only five true SLAPP lawsuits have been dismissed, out of nearly 1,000 reported appellate TCPA cases. In the other lawsuits, the TCPA was used to seek dismissal of non-SLAPP cases.

An Austin Court of Appeals decision noted that the TCPA had been applied "*in cases for fraud and barratry, a suit for contamination of a water well, a dispute between neighbors over a fence, defamation claims arising from an employment dispute, a snarl of competing claims arising from discussions among horse breeders on social media, and a host of other types of claims.*"

Walker goes on to suggest that the surest way to deal with true SLAPP cases while avoiding unnecessary costs is to amend the TCPA to require a movant to prove the legal action was brought for an improper purpose or to silence or punish an opponent.

Until then, the abuse will continue. ■

Is It Time to Update the Frivolous Lawsuit Statute?

By Lee Parsley, TLR President and General Counsel

The most common complaint we hear about litigation in Texas is the persistence of "frivolous lawsuits." And it's fair, after 30 years of tort reform, to ask why they still exist.

The answer is multifaceted.

In the 1980s and 1990s, the Legislature and the Texas Supreme Court took steps to end frivolous litigation. Consequently, two chapters of the Civil Practice and Remedies Code *and* a rule of civil procedure allow trial courts to punish lawyers and litigants for pursuing meritless cases.

But the Texas Bill of Rights says state courts shall be open to Texas citizens. Respecting this constitutional mandate, the Legislature and Supreme Court refused to create standards that might discourage Texans from accessing their courts. Thus, the standards for imposing punishment are quite high.

Even when it appears the standards have been met, trial judges tend to err on the side of forgiveness. Because judges are elected in Texas, they are understandably reluctant to punish even the most egregious conduct, for fear of alienating a potential campaign contributor.

It's important to note that a lawsuit is not frivolous just because it is time consuming, bothersome and expensive to defend. Most lawsuits have some basis in law or fact. But the litigation tactics used may still be abusive.

We believe there is a way to respect the constitutional open courts provision while cutting down on abusive litigation. We think it's time to revisit the "frivolous lawsuit" provisions of Texas law.

First, we should distinguish between a *meritless lawsuit* and *abusive tactics*. The current law's high standards may be sufficient for determining if a lawsuit is meritless enough to impose a penalty. But they are too high when the problem is the use of abusive litigation tactics.

Pleading multiple claims or defenses that, in reality, will never succeed is one form of litigation abuse. In a typical hailstorm lawsuit, for example, a plaintiff will plead violations of the Prompt Payment of Claims Act, multiple subsections of the Unfair Claim Settlement Practices and Deceptive Trade Practices acts, common law fraud, multiple acts of negligence, conspiracy and others. The pleadings are often pro forma, with nothing more than the names changed. While the basic claim that the insurance company underpaid may be valid, many of the others have no factual basis.

In trucking lawsuits, the plaintiff often pleads negligent entrustment, hiring, training, supervision and retention shortly after the accident, before the plaintiff's attorney could possibly know if the company truly was negligent in any of those things. So, while the truck driver may have caused the collision, the cookie-cutter pleading is initially filed without a factual foundation.

Plaintiff's attorneys then typically attempt to use the pretrial discovery process to fish for anything to support the cookie-cutter pleading. If they are allowed to dig deep enough for long enough, there's a chance they will finally find *something* to use against the defendant in trial. Or the defendant will pay the ransom and move on.

It takes a plaintiff only a few minutes of a paralegal's time to change the names in a pro forma lawsuit, but it takes the defendant *hours* of attorney time to respond to discovery demands, draft motions for summary judgment, and otherwise work to refute the unsupported allegations.

Defendants aren't completely innocent, either. The rote pleading of inapplicable defenses is a problem, too.

Another is the persistent pleading of "facts" that have been proven untrue. A plaintiff or defendant will land on a theory they think will be compelling to a jury and stick with it despite conclusive evidence it is misguided.

All of these abuses can be addressed without shutting the courthouse doors.

A pleading should be based on known facts, period. Using discovery as a fishing expedition should expose that party to punishment, period. Persistent lying and mischaracterization of evidence is also an abuse that warrants punishment.

The statutes and rules can and should be updated to address these and other problems, and TLR will eagerly support any such efforts. ■