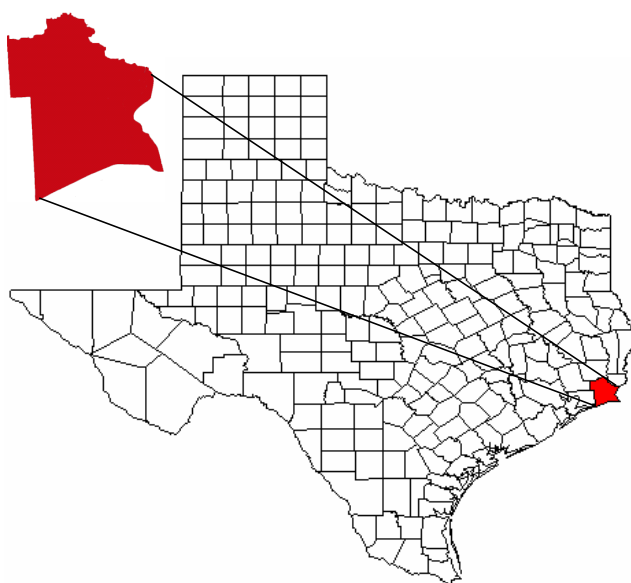


THE MAKING OF A JUDICIAL HELLHOLE



A CASE STUDY OF JEFFERSON COUNTY, TEXAS

AUGUST 2005

TABLE OF CONTENTS

Overview.....	1
New Analysis of Jefferson County.....	2
Parties to Civil Litigation.....	4
Analyzing Personal Injury Lawsuits.....	4
Asbestos Litigation.....	5
A Page of Jefferson County History.....	6
Beaumont: Friendly to Certain Plaintiffs and Certain Lawyers?.....	7
Class Action Lawsuits: One Jefferson County Growth Industry.....	7
Does Litigation Impact Growth and Economic Development?.....	9
Does Legal Reform Work in Jefferson County?.....	10
Conclusion.....	11

About the American Tort Reform Foundation

The American Tort Reform Foundation (ATRF) is a District of Columbia nonprofit corporation, founded in 1997. The primary purpose of the Foundation is to educate and inform the general public on how the

American civil justice system operates, the role of tort law in the civil justice system, and the impact of tort law on the private, public and business sectors of society.

To download a copy of this report in pdf format, visit www.atra.org.

*Judicial Hellholes is a registered trademark of the American Tort Reform Association being used under license by ATRF.
Copyright © 2005 by American Tort Reform Foundation.*

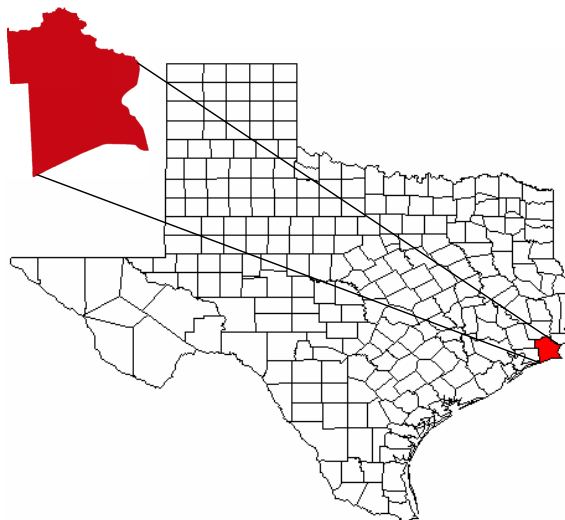
THE MAKING OF A JUDICIAL HELLHOLE A CASE STUDY OF JEFFERSON COUNTY, TEXAS

OVERVIEW

The courts of Jefferson County, Texas, have long been viewed as a home for speculative litigation. In fact, Jefferson County was cited in 2004 as the fifth most unfair trial court jurisdiction in the United States in the American Tort Reform Foundation’s “*Judicial Hellholes®*” report. In addition, Jefferson County was named a Judicial Hellhole in the 2002 and 2003 reports.¹

What do all of the Judicial Hellholes have in common? Based on interviews, research and surveys conducted for the reports, Judicial Hellholes act as “magnet jurisdictions.” Personal injury lawyers file cases in these jurisdictions because they expect to establish a favorable precedent, win a large verdict, or both.²

Until now, however, there has never been a quantitative analysis of the number and types of civil and personal injury lawsuits filed in a Judicial Hellhole. An analysis of Jefferson County’s caseload was chosen for two reasons: It has been featured in all three editions of the Judicial Hellholes reports, and unlike some other jurisdictions, Jefferson County has been subject to a significant number of legal reform initiatives passed by the Texas Legislature since 1995.³



Jefferson County continues to act as a “magnet jurisdiction” for cases from across Texas, and across the United States. Despite significant legal reform initiatives passed in Texas over the last decade, the number of civil and personal injury lawsuits filed in Jefferson County remains disproportionately high. Certain verdicts handed down in Jefferson County courts also appear well outside the legal mainstream.⁴

Jefferson County remains a favored forum for personal injury lawyers – a reputation that has harmful consequences for Jefferson County’s residents. An excess of litigation harms

¹ In 2002, ATRA did not rank each individual jurisdiction, however, Jefferson County was among the 12 worst chronicled in the report. ATRA’s 2003 report identified Jefferson County as the second worst trial court jurisdiction in the United States. In 2004, the report ranked it fifth-worst.

² “Judicial Hellholes 2004.” American Tort Reform Foundation. <http://www.atra.org/reports/hellholes/report.pdf> (accessed 24 February 2005) 6.

³ “Texas Reforms.” American Tort Reform Association. <http://www.atra.org/states/TX> (accessed 24 February 2005).

⁴ See Johnson v. Trinity materials, Jefferson County, Texas Dist. Ct. No. A164606, \$163,822,686 for an exploding dirt hauler tire. Cited in “Top 100 in 2003,” Verdict Search. http://www.verdictsearch.com/jv3_news/top100 (accessed 22 December 2004); and Coffey v. Wyeth, a \$1.013 billion verdict, cited in Abelson, Treed and Jonathan D. Glater. “A Texas Jury Rules Against a Diet Drug.” *New York Times*. 28 April 2004.

the region's healthcare system, and makes it difficult for Jefferson County to attract businesses and new jobs.

NEW ANALYSIS OF JEFFERSON COUNTY

This new research expands upon earlier analyses of Jefferson County's docket, such as The Manhattan Institute's 2001 analysis of Jefferson County's class action litigation.

For this project, research focused on two interrelated aspects of Jefferson County's civil justice system: the entire number of civil lawsuits filed in the county, and the number of personal injury lawsuits filed – a subset of the civil litigation docket that pertains more specifically to tort claims.

The analysis focused on general trends and specific cases. Areas examined included civil filing data in the Texas' Office of Court Administration, civil filing data in the Jefferson County District Clerk's Civil Index, and every civil lawsuit filed in Jefferson County between September 1, 2002 and August 31, 2003 (hereafter "fiscal 2003").

The results confirm that based on its size, Jefferson County attracts a disproportionately high number of civil cases. In 2002, on a per-capita basis, Jefferson County had far more civil suits per resident – nearly 117 per every 10,000 residents – than any other county in Texas with a population greater than 200,000 residents.

Based on per-capita data, the number of personal injury lawsuits (a subset of civil suits) filed in Jefferson County over a two-year period from 2003-2004 reveals that Jefferson County leads Texas. On a per-capita basis, more personal injury lawsuits were filed in Jefferson County per 10,000 residents – 56 – than any other Texas county of more than 200,000 residents.

TEXAS COUNTIES BY PERSONAL INJURY LAWSUITS PER CAPITA, 2003-2004*
COUNTIES OF POPULATIONS GREATER THAN 200,000 INCLUDED

County	Population in 2000	Percentage of Statewide Population	Personal Injury Lawsuits Two-Year Total	Personal Injury Lawsuits Two-Year Average	Total Personal Injury Lawsuits Per 10,000 Residents	Average Personal Injury Lawsuits Per 10,000 Residents	County Percentage of Total Statewide Personal Injury Lawsuits
Jefferson	252,051	1.21%	1,416	708	56	28	4.04%
Galveston	250,158	1.20%	1,191	596	48	24	3.40%
McLennan	213,517	1.02%	764	382	36	18	2.18%
Dallas	2,218,899	10.64%	7,264	3,632	33	16	20.72%
El Paso	679,622	3.26%	1,660	830	24	12	4.74%
Brazoria	241,767	1.16%	550	275	23	11	1.57%
Harris	3,400,578	16.31%	6,724	3,362	20	10	19.18%
Tarrant	1,446,219	6.94%	2,869	1,435	20	10	8.18%
Nueces	313,645	1.50%	423	212	13	7	1.21%
Montgomery	293,768	1.41%	291	146	10	5	0.83%
Denton	432,976	2.08%	357	179	8	4	1.02%
Lubbock	242,628	1.16%	201	101	8	4	0.57%
Travis	812,280	3.90%	595	298	7	4	1.70%
Collin	491,675	2.36%	325	163	7	3	0.93%
Fort Bend	354,452	1.70%	232	116	7	3	0.66%
Hidalgo	569,463	2.73%	359	180	6	3	1.02%
Williamson	249,967	1.20%	152	76	6	3	0.43%
Bexar	1,392,931	6.68%	701	351	5	3	2.00%
Bell	237,974	1.14%	48	24	2	1	0.14%
Cameron	335,227	1.61%	36	18	1	1	0.10%
STATEWIDE	20,851,820	100.00%	35,054	17,527	17	8	100.00%

By comparison, over the same period of time, the Texas statewide total number of personal injury lawsuits – 17 per 10,000 residents – is substantially lower than Jefferson County.

*This data does not reflect auto accident claims.

PARTIES TO CIVIL LITIGATION

The aggregate number of civil lawsuits does not tell the full story of the scope of civil litigation in Jefferson County. Many of the civil lawsuits filed in Jefferson County name more than one plaintiff and more than one defendant. In 2004, 4,126 plaintiffs and 18,971 defendants were named in the 2,979 civil lawsuits in Jefferson County. In 2003, 41,433 parties were named in 3,992 civil lawsuits filed in Jefferson County courts – 16,066 plaintiffs and 25,367 defendants. Over the last 20 years, 399,003 parties have been involved in civil litigation in Jefferson County. For comparison purposes, the population of Jefferson County over the age of 16 is only 194,853.

The trend is discouraging. Plaintiffs who file suits in Jefferson County are naming an ever-increasing number of defendants in their claims. In 1996, civil lawsuits in Jefferson County named, on average, 2.4 defendants. By 2004, the average number of defendants named per lawsuit had more than doubled to 6.37.

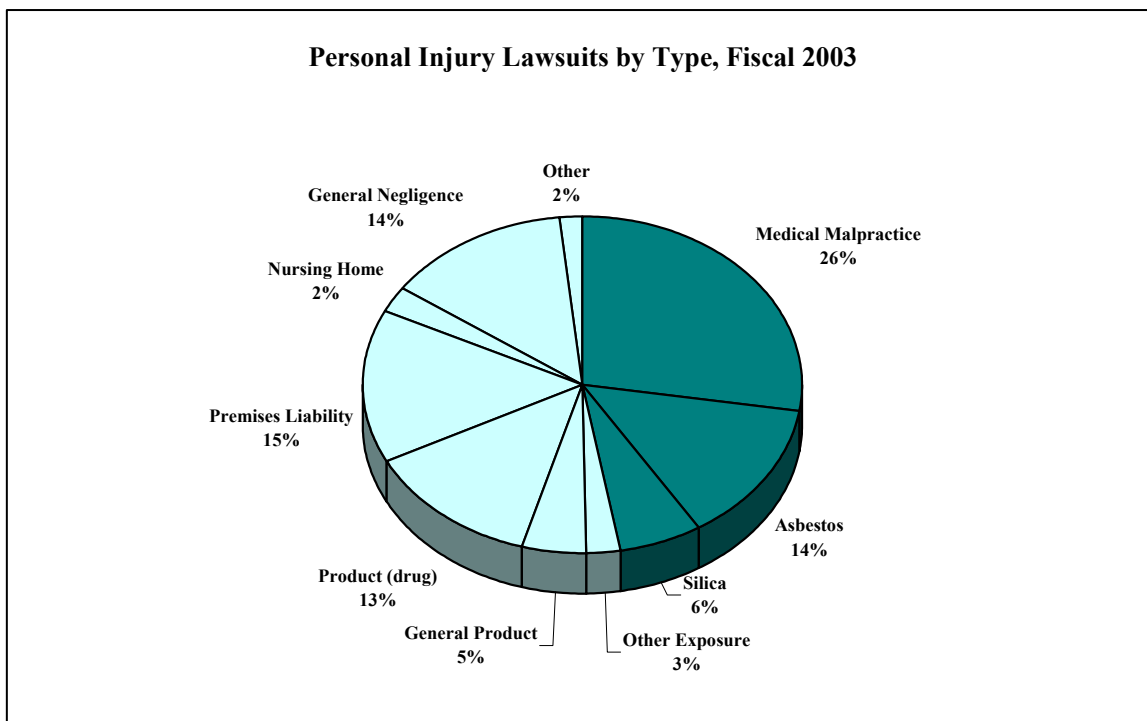
Why is the number of parties to litigation significant? Every party involved in civil litigation, whether plaintiff or defendant, represents a discrete investment in time, money, legal expertise, and – presumably – the outcome of the litigation. Adding defendants is cheap for personal injury lawyers – just a few more lines of text on the complaint. But for defendants, the cost of defending a lawsuit – even a frivolous one – can cost tens of thousands of dollars.

ANALYZING PERSONAL INJURY LAWSUITS

Each of the civil lawsuits filed in Jefferson County from September 1, 2002 through August 31, 2003 were analyzed. During that time, there is some discrepancy in the actual number of suits filed. Records were located for only 3,160 civil suits on file in the Jefferson County Clerk’s office, even though the Office of Court Administrator reports 3,992 filings. The lower number is used in this analysis.

Of the 3,160 civil lawsuits reviewed, 1,039 – nearly one-third (32 percent) – were personal injury claims. An additional 20 percent were auto claims. The balance were tax and contract filings (21 and 12 percent respectively), 4 percent were alleged violations of Texas’ Deceptive Trade Practices Act, and a general category of “other” comprised 11 percent of the civil docket.

Among these 1,039 personal injury claims, nearly half (46 percent) are related to claims of medical malpractice or to claims of exposure to asbestos or silica dust. An additional 13 percent of Jefferson County’s personal injury cases are comprised of pharmaceutical product liability cases. The balance consist of general product liability claims, general negligence claims, premises liability claims, and a general category encompassing other personal injury litigation.



In the abstract, the 285 medical malpractice cases filed in Jefferson County during the fiscal year may not seem significant. At the time, however, Jefferson County had only 534 physicians practicing within the entire county.⁵

The effect of this litigation on Jefferson County's healthcare system has been profound. Between 1999 and 2002, more than half of the physicians in Jefferson County saw their medical liability premiums increase by 55 percent, causing a number of physicians, particularly those in medical specialty fields, to leave the region.⁶

ASBESTOS LITIGATION

Contemporary asbestos litigation is recognized by many as a perversion of the tort system.⁷ Unlike early asbestos lawsuits adjudicated in Beaumont and across the country, which generally compensated the claims of legitimately sick plaintiffs with assets from culpable defendants, contemporary asbestos litigation often compensates unimpaired plaintiffs at the expense of those plaintiffs who may be legitimately injured. In fiscal 2003, there were 141 asbestos personal injury claims filed in Beaumont courts.

⁵ "Physicians by County then Specialty." Texas State Board of Medical Examiners. <http://www.tsbme.state.tx.us/demo/docs/d2002/0902/i-l.htm> (accessed 11 February 2005).

⁶ "2003 Judicial Hellholes," American Tort Reform Association, 6.

⁷ RAND Institute for Civil Justice website. <http://www.rand.org/icj/> (accessed 24 February 2005).

As Cardozo University law professor and legal ethicist Lester Brickman recently noted...

“As a cultural phenomenon, asbestos litigation has come to signify the Dickensian potentiality of modern products liability litigation. Once begun, it is sustained by its own life force, enriching lawyers and others and impoverishing thousands of unseen victims.”⁸

Personal injury lawyers frequently set up “exam-mobiles” and advertise free asbestos screenings as a mechanism to screen and sign up potential asbestos plaintiffs. Brickman’s scholarship notes that Beaumont is one of the regions in which these massive asbestos screening operations frequently occur.⁹ He says of these screening operations...

“[P]laintiff lawyers [rely] on these mass screenings to generate up to 90% of new claims despite the fact that the vast majority of the claimants thus produced have (a) no medically cognizable injury and (b) have actual lung conditions which are not medically distinguishable from many, if not most of the adult male population of the United States...”¹⁰

A PAGE OF JEFFERSON COUNTY HISTORY

Jefferson County didn’t start out this way. Situated on the East Texas coast close to the Louisiana border, Jefferson County grew along with the petroleum and shipping industries. It is a place where crude oil gets refined into gasoline and other petroleum products. It is also a blue-collar town, home to scores of pipe fitters, welders and maintenance engineers who keep the region’s refineries operating.¹¹ Beaumont, Jefferson County’s largest metropolitan area, is home to about 133,866 residents.¹²

Beaumont is the birthplace of contemporary asbestos litigation. In 1966, the first asbestos lawsuit in the United States was filed in Beaumont by attorney Ward Stephenson on behalf of his client Claud Tomplait, who had been diagnosed with asbestosis. The jury that heard Tomplait’s case returned a verdict favorable to the defense. This defense verdict was *not* the beginning of a trend. During the 1970s and 1980s, Beaumont became well known as one of the most favored jurisdictions for asbestos litigation.¹³ A handful of Beaumont personal injury lawyers won millions in legal fees from asbestos litigation.

⁸ Brickman, Lester. “On the Theory Class’s Theories of Asbestos Litigation: The Disconnect Between Scholarship and Reality.” *Pepperdine Law Review*. Vol. 31, No. 33 (2004).

⁹ *Ibid*, footnotes.

¹⁰ *Ibid*, 43.

¹¹ “Beaumont Known for Torts, Terry Maxon.” *The Dallas Morning News*. 20 July 2003.

¹² “Texas Quick Facts.” U.S. Census Bureau. <http://quickfacts.census.gov/qfd/states/48/4807000> (accessed 17 February 2005).

¹³ *Op Cit*. Brickman.

BEAUMONT: FRIENDLY TO CERTAIN PLAINTIFFS AND CERTAIN LAWYERS?

Are the courts of Jefferson County somehow unique? Some lawyers who practice there certainly think they are. The biography of one Dallas trial lawyer features a virtual case study on forum shopping. It touts his work on a class action lawsuit that concerned a payment dispute in El Paso – at the far western tip of Texas. His website touts how he...

“capitalized on favorable venue rules to hold the case more than 800 miles away, in Beaumont – where the defendant had recently laid off hundreds of workers.”¹⁴

The result: a \$61 million verdict that was leveraged in subsequent settlement negotiations.

A second personal injury lawyer practicing in Jefferson County is much more straightforward in his biography...

“Given the nature of trial practice in Southeast Texas, it is wise to hire an attorney with both knowledge and positive working relationships with the local courts who [sic] will hear their cases.”¹⁵

While common sense might dictate that it is better to hire a lawyer with positive working relationships rather than negative relationships, this statement raises some important questions. Aren't all Texas attorneys in good standing supposed to be equal before the courts? Furthermore, what is the precise nature of the *positive working relationships* that this attorney enjoys with the courts of Southeast Texas?

CLASS ACTION LAWSUITS: ONE JEFFERSON COUNTY GROWTH INDUSTRY

Over the last decade, Beaumont has earned a reputation as a “magnet jurisdiction” for class action lawsuits. It has attracted an ever-increasing number of national class action lawsuits, some of which appear to have been adjudicated on terms that appear to provide little value for class members, and significant financial value for the personal injury lawyers who represent the class.

Class action lawsuits were initially designed to be a tool of judicial economy. The class action mechanism allows citizens with similar legal claims to have those claims aggregated as a “class” and adjudicated in a single legal proceeding. The mechanism is particularly effective in instances where a large number of individuals have similar legal claims for relatively modest sums – claims that would be impractical, unworkable and too expensive to litigate individually. Unfortunately, what was once a tool of judicial economy has since devolved into a tool of defendant extortion that benefits few parties other than the personal injury lawyer who files the case.

¹⁴Susman Godfrey website. <http://susmangodfrey.com/bio/bio-wcarmody.html> (accessed 29 October 2004). Recent changes to Texas' venue laws have made this type of forum shopping much more difficult.

¹⁵Ferguson Firm website. <http://www.fergusonfirm.com/main.php?id=100009> (accessed 29 October 2004).

The Manhattan Institute, a think tank that focuses some of its research on civil justice issues, analyzed the class action filings in Jefferson County between 1998 and 2000. The Manhattan Institute's findings were alarming.

Between 1998 and 2002, the number of class action lawsuits filed in Jefferson County increased by 82 percent.¹⁶ Equally surprising, only 13 percent of the class action defendants, and just 64 percent of the named class action plaintiffs involved in these class action lawsuits, were residents of Jefferson County.¹⁷ Even many of the personal injury lawyers who filed these cases came from someplace else. According to The Manhattan Institute's analysis, 58 percent of the law firms filing class actions in Jefferson County listed addresses outside the county.

Consider three recent examples from Jefferson County's docket. In one, a nationwide class action was filed by 165 plaintiffs' counsel in Jefferson County against Dallas-based Blockbuster video over late-fee charges incurred by its customers. Like most class actions, the case never went to trial; instead, it settled. The terms of the settlement vary depending upon the amount that each class member paid in late fees to Blockbuster; most class members received coupons for free movie rentals and additional Blockbuster discounts.¹⁸ It was expected that fewer than 10 percent of eligible class members would take advantage of these modest settlement terms.¹⁹ Plaintiffs' counsel received \$9.25 million in fees.²⁰

Settlements, such as the Blockbuster class action settlement, raise a fundamental question about the administration of justice in Jefferson County. How can a personal injury lawyer representing the class support, and how can a judge approve, the terms of a settlement that are ultimately expected to provide no tangible benefit to more than 90 percent of the class' members?

In another national class action lawsuit filed in Jefferson County against computer maker Toshiba, the Beaumont-based law firm of Reaud, Morgan & Quinn claimed that a disk problem in Toshiba laptop computers could cause data loss. Ironically, not a single consumer ever actually claimed to have been harmed from this disk problem, and Toshiba was unable to replicate the glitch in its own tests.²¹ The class action lawsuit resulted in a billion-dollar settlement that "awarded" Toshiba customers rebates of \$100 to \$300.²²

As one national legal commentator observed...

"And the beauty of it is that my Toshiba works just fine! ...So remote is the possibility that our laptop will ever seriously malfunction that I may not get around to downloading the free software 'patch' that Toshiba has provided as part of the settlement."²³

¹⁶ Beisner, John H. and Jessica Davidson Miller. "They're Making a Federal Case Out of It...In State Court." *Civil Justice Report*. The Manhattan Institute. No.3 (September 2001): 8.

¹⁷ *Ibid*, 9.

¹⁸ Dornon, Lenette. "Blockbuster of a Settlement." *Chico News and Review*. 2 August 2001.

¹⁹ Beisner, "They're Making a Federal Case Out of It," 20.

²⁰ Dornon, "Blockbuster of a Settlement," NP.

²¹ Mach, Cora Sue. "No Consumer Complaints, No Problem. Lawyers File 'Copy Cat' Suits Against PC Makers." Citizens Against Lawsuit Abuse. <http://www.calahouston.org/flop.html> (accessed 17 February 2005).

²² Olson, Walter. "Gold Bugs: Class Action Lawyers Discover Silicon Valley." *Reason Online*. <http://reason.com/0002/co.wo.reasonable.shtml> (accessed 17 February 2005).

²³ *Ibid*.

While this class action lawsuit did provide cash rebates to consumers, or albeit consumers who had not actually had problems with their computers, the settlement was a far better deal for their lawyers who were awarded \$147 million in fees.²⁴

Although Texas enacted significant class action reforms in 2003,²⁵ personal injury lawyers still find creative ways to file speculative legal claims in Jefferson County. In one recent case, any local child who breathed air was a potential mass tort plaintiff.

In fall 2004, personal injury lawyer Tim Pearson filed a mass tort claim on behalf of 6,000 minor children who, Pearson claims, breathed air polluted by emissions from local chemical companies. Pearson specifically chose children as his plaintiffs in order to circumvent a recent Texas Supreme Court decision that limits the statute of limitations on nuisance claims against chemical companies to two years from the date of injury for adults. The Texas Supreme Court's ruling does not apply to children, hence their inclusion as the sole plaintiffs in this novel lawsuit.²⁶

Other national class action lawsuits have been filed in Jefferson County against national retailer Best Buy over its warranty policies in 41 states, insurer Allstate in a national class action over the valuation of wrecked vehicles, and the wood-products company Boise Cascade over its wooden mobile home siding.²⁷

DOES LITIGATION IMPACT GROWTH AND ECONOMIC DEVELOPMENT?

From 1980 to 2002, while Texas' population grew at a robust 54 percent, Jefferson County's population declined slightly – from about 251,000 to 249,000 residents. Jefferson County's median household income also lags substantially behind the Texas average: \$34,706 compared with \$39,927 for the entire state.²⁸ While these statistics alone do not establish a cause-and-effect relationship between Beaumont's litigation environment and its economic health, Beaumont's Chamber of Commerce acknowledges that the city's reputation for litigation makes it challenging to attract business to Beaumont.

That is, businesses other than personal injury law firms. According to Jim Rich, President of the Beaumont Chamber of Commerce, the law firms of Jefferson County represent a significant portion of the region's business interests...

*"In fairness, it represents to us an industry. It puts a lot of people to work here," said Rich in 2003.*²⁹

²⁴ Ibid.

²⁵ "Texas Reforms," American Tort Reform Association, NP.

²⁶ "Attorneys to File 6,000 Lawsuits Over Emissions." *The Daily Herald*. Sunday, 10 October 2004. www.harktheherald.com (accessed 29 October 2004).

²⁷ Beisner, "They're Making a Federal Case Out of It," 19-22.

²⁸ "Texas Quick Facts." U.S. Census Bureau. <http://quickfacts.census.gov/qfd/states/48000.html>; Forstall, Richard L. "Texas: Population of Counties by Decennial Census." U.S. Census Bureau. <http://www.census.gov/population/cencounts/tx190090.txt>; and "Texas Quick Facts: Jefferson County." U.S. Census Bureau. <http://quickfacts.census.gov/qfd/states/48/48245.html> (All accessed 13 February 2005).

²⁹ "Beaumont Known for Torts, Terry Maxon," NP.

Personal injury lawyers such as Walter Umphrey of the Beaumont law firm of Provost & Umphrey won millions in legal fees from asbestos litigation. Today, Umphrey's firm boasts a heliport atop its offices and a hangar for its private jet at the Beaumont airport.³⁰

DOES LEGAL REFORM WORK IN JEFFERSON COUNTY?

While diagnosing the scope of the litigation challenges in Jefferson County has been relatively easy, fixing them in a way that prevents Jefferson County's personal injury lawyers and judges from creatively circumventing the laws has proven far more challenging. Legal reforms enacted by the Texas Legislature in early 2003 created a stampede to Jefferson County's courts in advance of the law's effective date of September 1, 2003.

The law passed by the Texas Legislature in 2003 expanded upon earlier reforms passed in Texas during the 1990s and in 2001. Highlights included class action lawsuit reform, limits on forum shopping, limits on noneconomic damages that could be collected in medical liability lawsuits, asbestos successor liability reform, and legislation to encourage the prompt settlement of legal claims.³¹

The law's September 1, 2003 effective date drove a sharp increase in lawsuit filings by personal injury lawyers who did not want their clients' cases to be subject to the new law's provisions.

Thirty-five percent more civil lawsuits were filed in Jefferson County courts during the 2003 fiscal year, which ended on the day before the 2003 legal reform law went into effect.

The majority of the lawsuits contributing to this "spike" in claims during 2003 were personal injury claims, which were subject to the new law's provisions. The number of contract filings, which were not subject to the law's limits, remained relatively stable when compared with fiscal years 2002 and 2004.

During the day-to-day filings in Jefferson County's courts for the week immediately preceding the effective date of Texas' new legal reforms, there was a remarkable influx of medical liability lawsuits filed in advance of the new law.

In the week preceding the law's effective date, 101 medical liability claims were filed in Jefferson County's courts, slightly more than one-third of the medical malpractice claims filed that entire year. Five were filed on August 25, 5 were filed on August 26, 10 were filed on August 27, 19 were filed on August 28, and a whopping 62 were filed on August 29, the last business day before the new law took effect.

During the 2004 fiscal year, which began on the law's effective date of September 1, 2003, 34 percent fewer civil lawsuits were filed than in fiscal 2003.

³⁰ Provost and Umphrey Law Firm, LLP. <http://www.provostumphrey.com/FirmProfile.asp> (accessed 8 February 2005).

³¹ "Texas Reforms," American Tort Reform Association, NP.

Then, in April 2004, a Beaumont jury handed down a \$1.013 billion verdict in a diet drug litigation case. That award consisted of \$113 million in compensatory damages, and \$900 million in punitive damages.³² The case typifies how Beaumont’s courts and personal injury lawyers work to subvert legal reforms enacted by the Texas Legislature. Normally, this award’s punitive damages would be automatically reduced in accordance with a 1995 Texas law that limits punitive damages to the greater of \$200,000 or two times the award of economic damages plus noneconomic damages up to \$750,000.³³

But not in Jefferson County. There, Judge Donald Floyd, in effect, rejected the limitations contained in the 1995 law and accepted Beaumont personal injury lawyer John O’Quinn’s novel legal argument that the defendant had somehow committed a felony, and therefore the punitive damages cap should not apply.

Judge Floyd excluded evidence that the plaintiff in this case had taken four diet drugs in addition to the defendant’s medicine, and that the plaintiff’s symptoms did not appear until *four years* after she stopped taking the defendant’s medicine.³⁴ Not surprisingly, the diet drug manufacturer planned to appeal.

CONCLUSION

While it’s clear that personal injury lawyers can creatively circumvent the clearest of legal reform statutes, there is some hope for Jefferson County. The reforms enacted by the Texas Legislature in 2003, coupled with the recent enactment of the Class Action Fairness Act by Congress and new Texas legal reforms, such as asbestos litigation reform and further modifications to Texas’ *forum non conveniens* law, may ultimately improve the litigation environment in Jefferson County and encourage business to locate to the area. Until then, residents across Texas can expect Jefferson County to continue its distinction as a Judicial Hellhole.

³² “Top 10 in 2003,” Verdict Search; and Abelson, “A Texas Jury,” NP.

³³ “Texas Reforms,” American Tort Reform Association, NP.

³⁴ “Judicial Hellholes 2004,” American Tort Reform Foundation, 26.



1101 Connecticut Avenue, NW, Suite 400

Washington, DC 20036

(202) 682-1163

www.ATRA.org