



TODD LAW FIRM RETAINED IN CASE OF DEADLY CRASH

A wrongful death case filed by The Law Firm of Alton C. Todd involves the victim of an automobile crash, Leticia Ortiz, 26, who was killed when an off-duty Texas City police officer struck the rear of her car. John White, whose blood-alcohol level registered more than twice the legal limit at the time of the accident, was driving a pickup when it slammed into Ortiz's parked compact car on January 18.

Ortiz was thrown from the car and onto the pavement when White's pickup reportedly left the roadway and slid onto the right-hand shoulder just north of the Auburn Road exit on FM 1764.

Following a February 5 grand jury indictment, White was placed on indefinite suspension from the Texas City Police Department. The charge carries a possible prison term of 2 to 20 years.

Attorney Clint E. McGuire Specializes In Representing Injured Railroad Workers

Attorney Clint E. McGuire, who joined The Law Firm of Alton C. Todd in February, brings a valuable third dimension to the Friendswood practice, following the 2007 addition of Jeffrey N. Todd to his father's firm.

Clint, whose practice has focused on representing injured railroad workers and their families in Federal Employers' Liability Act (FELA) cases, has a vast amount of experience in railroad, personal injury and commercial litigation. He grew up in a railroad family. His father has been employed as a conductor for BNSF Railway Company since 1972, and his brother and other family members worked as conductors for the Union Pacific Railroad Company. Clint has prosecuted hundreds of FELA cases for injured railroad workers, including cases

involving the Federal Safety Appliance and the Locomotive Inspection Acts, van accidents, wrongful death, grade crossing accidents, hearing loss and repetitive or occupational injuries. He has also successfully represented numerous victims of large trucking accidents, as well as corporations involved in multi-million dollar litigation.

Earning his J.D. at South Texas College of Law in Houston in 1999, Clint was in the top 17 percent of his class, receiving Best Speaker and Best Brief honors in national competition, as well as the American Jurisprudence Award in Property. At the

Domino's Driver Delivers Pain and Injury

A lawsuit has been filed in Harris County, Texas by the Law Firm of Alton C. Todd, involving the firm's 15-year-old client and Domino's Pizza.

The teenager was walking home with two of his friends when a Domino's pizza driver hit him. He sustained serious injuries to his abdomen, his head and face. He had a craniotomy to remove a blood clot from the brain; his spleen was removed, and facial injuries required surgery. A procedure to replace the bone or plate should be done in the near future. He has significant headaches.

He is lucky to be alive.

The pizza driver was traveling at a speed of more than 50 mph in a residential neighborhood. He had a drug conviction last year and 11 infractions with the Municipal Court of Laporte, Texas. It is suspected that he had used marijuana on the day of the accident.

At one time Domino's had a 30-minute guarantee of pizza delivery. That guarantee was discontinued in 1993 after a St. Louis woman involved in a car wreck with a Domino's delivery person sued the company on grounds that the 30-minute pledge led to accidents. According to a *Wall Street Journal* blog, Domino's settled the lawsuit for what it says was in the seven-figure range.

Last December, a few days before the Texas accident, Domino's brought the 30-minute gimmick back with a new advertising campaign, carrying the tagline "You Got 30 Minutes." That is *supposed* to mean that the customer has 30 extra minutes to do something other than prepare a meal. The agency creating the ad said there was no legally safe way to do it: "We knew the historic baggage that surrounded it, so the mission became, how do we use the equity that takes advantage of the historical link but is 'appropriate' legally?"

While the Domino's web site has a disclaimer under "Legal Stuff," stating that the time is merely an "estimate," outside the United States, the old guarantee continues. That promise, for one foreign location, is spelled out at <http://www.dominos.com.my/guarantees.html>: "Domino's commits to deliver hot, fresh, great-tasting pizzas to our customer's doorstep within 30 minutes, or get a free regular pizza voucher on us! Domino's Pizza is the first in Malaysia to extend this kind of service commitment to customers."

Are the roads less congested, the drivers more cautious or human life less valued in places like Malaysia, India and Mexico than in the United States?



Clint E. McGuire

University of Houston in Clear Lake, Texas, where he received his B.S. in American Jurisprudence in 1995, he financed 100 percent of his education through full-time employment.

Clint was most recently associated with the Youngdal Law Firm in Friendswood and prior to that with Doyle, Restrepo, Harvin & Robbins and Phelps Dunbar, L.L.P., both Houston law firms. A member of the State Bar of Texas, the Houston Young Lawyers Association and the American Bar Association, he is licensed to practice in Texas state courts and the United States District Courts for the Southern, Eastern, Western and Northern Districts of Texas.

Secret Arbitration, Flawed Investigation Spell Demise of Victims' Right to Trial

The outrage that comes from recounting the brutal sexual attacks suffered by Tracy Barker and Jamie Leigh Jones while employed in Iraq by Halliburton and its former subsidiary, Kellogg Brown & Root (KBR), focuses first on the fact that no criminal charges were brought against the perpetrators of these heinous acts.

Tracy Barker, a mother of five, was subjected to sexually hostile living conditions from the moment she arrived at the Halliburton/KBR camp in Basra where five men were waiting for her. When she asked a male co-worker where her workplace was located, he replied, "You can either sit at the end of my desk or on the floor." She was later threatened and isolated after reporting an incident of sexual assault.

Jones, who was hired at age 19 to work for Halliburton in Houston, was sent to Iraq the next year. Drugged and raped by numerous co-workers at Camp Hope in Baghdad, she was then confined by company armed guards to a shipping container, denied food, water or medical attention. U.S. Army doctors performed an examination and turned the sexual assault kit over to Halliburton. It was later recovered minus some important pieces of evidence.

As alleged, the crimes occurred among employees of contractors involved in a contingency operation in Iraq maintained by

the U.S. government and involving U.S. citizens as perpetrators and victims.

The case for injustice does not end with the reporting and inaction surrounding these shocking events. Insult was added to injury when Barker, denied the right to criminal justice in Iraq, was also denied, by Judge Gray Miller of the Southern District of Texas, the right to present her case in open court in the United States. While writing in his order last month that "sadly, sexual harassment...is a reality in today's workplace," the judge ruled that Barker's case should be settled in private arbitration, supporting a KBR statement that "as part of her employment contract...Ms. Barker agreed to arbitrate all claims in the event a conflict arose."

Jones, who testified on Capitol Hill on February 12 told Congress she was not aware, until she decided to pursue a civil suit against Halliburton and KBR, that when she signed her employment contract she was effectively signing away her right to a trial by jury. As in Barker's case, KBR moved for her claim to be heard in private arbitration. Thirty-eight women have since come forward through her foundation to assist victims at <http://www.JamiesFoundation.org> to report their own tragic stories but cannot speak publicly due to arbitration agreements in their employer contracts.

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Be Careful What You Wish For

'Tort Reform' Affects Insurance Industry Litigation

"Everybody is sort of happy if judges sit around and don't have a lot to do. And if lawyers don't have cases to bring, who cares about that? But what about you guys?"

"You guys" were the Texas Surplus Lines Association in Austin being addressed at its annual meeting by insurance defense lawyer Gary Schumann, who wondered if the 2003 tort reform measures in Texas that the insurance industry successfully lobbied for, had gone too far.

That concern has nothing to do with the fact that malpractice victims have seen their rights to justice limited to extremely low levels by a constitutional cap on pain and suffering awards. The insurance lawyer's statement, expressing disdain for lawyers and judges, clarifies his professional priority.

Citing an example that tort reform may have worked too well, Schumann told the

group of insurance executives that judges, just to stay busy, are trying cases that otherwise might have gone to mediation. He also referred to Texas nursing homes that have stopped buying private liability insurance because they are no longer concerned about getting sued.

The implications are terrifying for patients in those nursing homes, which rank among the worst in the nation, according to a 2002 study by the U.S. House Committee on Government Reform, which found that more than 90 percent did not meet federal staffing standards.

But, a defense lawyer worries most that tort reform accomplishments have exceeded expectations and will affect the sales of insurance: "We want a little bit of litigation out there, don't we? We want a little bit of risk. We need risk or we're all out of business."

Texas Supreme Court Creates 'Legal Limbo'

Texas individuals, families, patients and businesses are being left in legal limbo because of the "snail's pace" operation of the Texas Supreme Court, says a February 28 report issued by Texas Watch, a statewide citizens' group that has actively monitored the state's highest court for over a decade.

Texas Watch examined court records for the past three years and discovered that the Court's backlog is a direct result of the failure of justices to do their jobs expeditiously. Asked by WFAA-TV if the Court had a problem with its work ethic, Chief Justice Wallace Jefferson said, "Well, I think that the Court could do better, and so to an extent I'd say yes."

Texas Watch's research shows that the backlog of cases left pending each year has increased by more than 300 percent over the course of this decade. Key findings include the following:

- The Court took an average of 852 days (2.3 years) to dispose of a case in the 2006-2007 term.
- Justices take an average of 416 days to write an opinion after the Court has heard oral arguments.
- The Court's backlog has increased from 14 in fiscal year 2000 to 60 in 2007.
- The Court has left 72 cases pending for more than a year without responding to a request for review. An additional 31 cases have been pending for more than 2 years.

Todd Law Firm Represents Rice Growers in Lawsuit

The Law Firm of Alton C. Todd, in association with a San Antonio law firm, represents several rice growers in their suit against Bayer CropScience, German chemicals and pharmaceuticals giant. The basis of the lawsuit filed by farmers in Texas, Arkansas, Missouri, Mississippi, Louisiana and California is that the company's unapproved genetically engineered rice, which found its way into the commercial supply chain, contaminated the crop.

As a result of Bayer's negligence, Japan and the European Union placed strict limits on U.S. rice imports, and U.S. rice prices have dropped dramatically. Although the United States is a small rice grower, it is one of the world's largest exporters, sending half of its crop to foreign buyers.

Multi-district litigation is pending, but it is expected that cases will be remanded to the states where they originated.

Carnival Death Result of Company Carelessness

Her short life was tumultuous, her death a tragedy. Fifteen-year-old Kelly Huff of Alvin, Texas traveled to Victoria to take a carnival job with Blue Ribbon Entertainment. On January 27, her first day on the job, Kelly suffered a fatal head injury during the dismantling of a ride called the Hammer Slammer.

The Hammer Slammer was long overdue for inspection. According to the Texas Department of Insurance, seven letters had been sent to the company, warning of non-compliance with yearly inspections. The last letter was sent three weeks before Kelly died. Although traveling carnival companies are required to provide the Department of Insurance with itineraries, this company had not done so since 2006, a department spokesman said.

Becoming a part of the magic and color of a carnival has stirred the imagination of many a child, but for Kelly Huff the opportunity of a carnival job may have offered more than a temporary thrill. It was at least no more unstable than the life she had known. She had lived in foster homes since infancy. Her biological parents' rights were terminated in 2002. In 2003, she was adopted, but her adoptive parents later gave up their parental rights. Only three months ago she was returned to the custody of her paternal grandmother and resided with her natural father.

An administration for the estate was taken out in Brazoria, Texas, and The Law Firm of Alton C. Todd was hired to represent the estate. Suit is pending in Harris County Texas District Court.

(To confirm that a Texas carnival is safe, call the Texas Department of Insurance at 512-463-6425. A carnival's safety record and compliance status is public record.)

THE ALTLAW™

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Historic Dynamic Defines Presidential Election

Until 1865, slavery for life was legal in the United States. Nearly a century and a half later, an African American is running for President.

The candidacy of Barack Obama is a powerful milestone on the road to human freedom. Our 16th President and author of the Emancipation Proclamation would be honored.

On August 26, 1920, with the passage of the 19th amendment, women finally earned the right to vote in all U.S. elections. And, today, Hillary Clinton is running for President.

Susan B. Anthony, who devoted five decades of tireless efforts to the women's suffrage movement, would be proud and likely amazed at the long way we have come.

The phenomenal and unprecedented choice of a Democratic candidate has energized

voters as never before. On March 4, about 1 million people voted in the Ohio G.O.P. primary, while 2.2 million voted in the Democratic contest. In Texas, twice as many voters participated in the Democratic primary as in the Republican primary.

It is the first election for President without incumbents in the primaries since 1928.

In politics anything can happen. The primary season will not end until June, and it is a long way until November 4 when all states will hold elections to select members of the Electoral College. If the primaries are any indication, it will be a deluge of enthusiastic voters, not the predictions of political pundits, who decide the outcome in this historic American moment, the 56th consecutive election for President of the United States.

Supreme Court Decision Protects Business, Favors Federal Regulation of Medical Devices

The protection of a patient's valuable legal rights was dealt another blow by a significant Supreme Court ruling on February 20. Continuing its pro-business stance, the Court favored federal pre-emption over state laws and state court remedies.

In the pre-emption case of *Riegel v. Medtronic*, the Court ruled against the estate of Charles Riegel, who died after a catheter made by Medtronic malfunctioned during heart surgery.

Medtronic, the largest manufacturer of implanted heart devices, produced the defibrillators recalled on October 15, 2007 after five deaths were linked to the devices. The defective Sprint Fidelis leads can fracture and cause unnecessary stress to the heart or not operate at all.

The Law Firm of Alton C. Todd has been retained by several injured individuals who used the defibrillators. One client, the first boy that Todd met when his family moved to Hamilton, Texas in 1955, had emergency surgery in December.

At issue before the Supreme Court in the case of *Riegel v. Medtronic* was whether a company could be sued under state law over a federally approved medical device. The Court, in an 8-1 decision, interpreted federal law as prohibiting state lawsuits. In a lone dissent, Justice Ruth Bader Ginsburg called the ruling a "radical curtailment" of state law remedies that Congress never intended when it passed the law.

The pro-business decision, authored by Justice Antonin Scalia, continues the trend of the Supreme Court to favor one federal regime over state court remedies in regulating companies while effectively denying affected

patients the right to seek compensation for injuries caused by defectively designed or labeled medical devices. There is, however, a possible loophole in the Supremes' sanctioned shield of medical device manufacturers against state legal action, and Medtronic's defective Sprint Fidelis leads may very well become a test case of the Medical Devices Amendment (MDA) passed by Congress in 1976.

The 1976 MDA gave the FDA overall control over approval of medical devices undergoing the full PMA (pre-market approval) process. However, not all medical devices receive approval through the PMA process. The Sprint Fidelis was approved via a "supplemental" application. A supplemental allows a new device to receive approval by proving only that it is substantially similar to an existing company device that went through the PMA process.

A 1996 Supreme Court decision ruled that devices approved via supplementals were not covered by the MDA.

Sponsors of the 1976 amendments to the MDA have said that it was never their intent to grant manufacturers immunity from lawsuits over injuries caused by their devices and have called for Congress to pass legislation to correct the situation.

The *Riegel v. Medtronic* ruling is expected to lead to costly litigation in the months ahead on whether it can be stretched to cover devices approved via supplementals. The decision also represents a serious challenge to the FDA, a broken agency badly in need of reform.

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RETURN SERVICE REQUESTED

Blocking the Courthouse Door Scholarly, Potent Eye-Opener

Five years after Texas voters were duped into approving a political cause that would take away their own legal rights, the end of “tort reform” is not in sight.

The effect, both real and potential, of the 2003 sweeping rewrite of the state’s civil justice laws is carefully researched in *Blocking the Courthouse Door* by Stephanie Mencimer, former *Washington Post* investigative reporter and now contributing editor of *The Washington Monthly*.

The myths and falsehoods behind the 2003 tort campaign are supported by compelling examples and anecdotes, as well as the kind of news that headlines don’t provide—for example, the tendency of judges to reduce jury awards and the lengthy appeals process during which defendants don’t pay a cent.

The author tracks the perpetuation of lawsuit myths to the American Tort Reform Association, founded by the American Medical Association and largely financed by the pharmaceutical, tobacco and insurance industries. To this day, ATRA’s web site touts “Loony Lawsuits,” and an ATRA spokesperson admitted to Mencimer that she doesn’t verify any of them.”

Texas has its own chapter in the book in a connection between Karl Rove’s consulting work for Philip Morris until 1996 and George W. Bush’s adoption of the tobacco industry’s cause of “tort reform” as a primary campaign issue in 1994.

The author has done her homework in documenting the many distortions of truth made by the corporate architects behind the movement to close the courthouse doors. The book is a powerful wake-up call to all Americans.

Secret Arbitration, Flawed Investigation

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The loss of both victims’ right to sue for civil relief in a U.S. court and being forced into arbitration is not a matter of being in Iraq. What happened to these two employees can happen to any American when binding arbitration clauses bar them from pursuing a case in court. The same could have happened had they been employed and abused in the United States. The arbitration clauses so convenient for business interests and which are often buried in employment contracts permit no judge or jury, no public record or media access, no rules of evidence or procedure and no appeal in a process where arbitration is paid for by corporate defendants. (Halliburton and KBR even sought to have Barker pay for their costs of defending their right to arbitrate! The request was denied.)

The horrible sexual assaults involving Jones were reported to the Justice Department early on, but an investigation of sorts conducted by the State Department did not support a decision to take criminal action.

The United States has a community of 180,000 contractors in Iraq. Using facts not disputed by KBR in Jones’ testimony, Scott Horton, *Harpers Magazine* contributor and New York attorney, makes a compelling

argument that the crimes she described come under the criminal law jurisdiction of the United States by the Department of Justice. Writing in a *Harpers* article, “What the Jamie Leigh Jones Case Teaches Us,” in holding that the federal government had a duty to citizens of the United States and to employees of the contractor community to vigorously uphold the law, Horton stated, “I have a lot of difficulty seeing how the executive branch has met this responsibility in the context of the United States presence in Iraq.”

Not only did the Justice Department not pursue justice in this case, but it didn’t even send a representative to the House Judiciary Committee hearings on the KBR rape case where Jones testified.

Supreme Court Decision

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Pharmaceuticals, who will have their day in court in a drug case coming up in the fall, are expected to use the *Reigel* ruling as fodder for their arguments. If successful, serious repercussions follow: a patient in the future could conceivably be prevented from suing a drug manufacturer over injuries stemming from a defective drug as long as it was approved by the FDA.

ALT-RUIISM

A national political campaign is better than the best circus.

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.